



EU Privacy seals project

Comparison with other EU
certification schemes

Final Report Study Deliverable 2.4

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The Institute for the Protection and Security of the Citizen of the Joint Research Centre (JRC), in collaboration with the Directorate-General for Justice (DG JUST), has launched a project on EU privacy Seals in April 2013. The project aims at identifying procedures and mechanisms necessary for the successful launch of an European-wide certification scheme, (e.g. EU privacy seals) regarding the privacy compliance of processes, technologies, products and services.

In the frame of this project, the JRC has commissioned under Service Contract Number 258065, a study to a consortium comprising Trilateral Research & Consulting, Vrije Universiteit Brussel and Intrasoft International S.A. Divided in five steps, the objective of the study is to analyse the scientific and organisational success factors for which it will be appropriate and feasible to launch such a European wide privacy certification scheme.

In order to provide advices and guidance on how successfully achieve the goals envisaged by the overall study, the JRC has set up a steering group composed by representatives from other DGs¹, the LIBE committee secretariat of the European Parliament, ENISA. This report constitutes the second deliverable of the study.

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1 INTRODUCTION

This report identifies and analyses key EU certification schemes in select sectors such as: network and information security, general product compliance, the environment, financial auditing and accounting, entertainment, the food industry and the telecommunications sectors and analyses them according to a standard set of criteria in relation to their background, development, practical set-up, legislative mandate (e.g., relevant directives, rules, links to legal obligations), main concerns and challenges. This identification and analysis will clarify the key principles on which such EU certification schemes are awarded and operate, and will help us draw lessons for an EU-wide privacy certification scheme.

2 OBJECTIVES

The objectives of this report are to:

- identify key EU certification schemes in selected sectors, and
- analyse the schemes according to a standard set of criteria in relation to their background, development, practical set-up, legislative mandate (e.g., relevant directives, rules and links to legal obligations), and their main concerns and challenges.

3 METHODOLOGY

First, we identified and finalised a set of criteria for the evaluation and analysis of the different sectoral schemes. The criteria were fine-tuned and elaborated during the Task following internal feedback from partners and external feedback from the Advisory Board.

For the research, the partners adopted a broad approach in the analysis and evaluation of certification schemes by focussing on a variety of sectors (i.e., network and information security, general product compliance, environment, financial auditing and accounting, entertainment, food industry and telecommunications). The main means adopted was desktop research on each of the identified schemes supported by requests for information (e-mail, telephone) where required.

The study examines the following nine schemes:

- The Common Criteria (network and information security sector)
- CE marking (general product compliance)
- EU Ecolabel (environment sector)
- Integrated Pollution Prevention and Control (IPPC) (environment sector)
- Green Dot (environment sector)
- International Financial Reporting Standards (IFRS) (financial sector)
- Pan-European Game Information (PEGI) (entertainment sector)
- Protected Designation of Origin (PDO) and Protected Geographical Indication (food sector)
- The Radio and Telecommunications Terminal Equipment Directive (telecoms equipment sector).

For each of these schemes, we studied the legal and practical set-up; how the certification schemes in these sectors relate to legislation; key principles on which the schemes are awarded; responsibility, accountability and sustainability of these schemes; and the success and failure factors. This information is presented in section 5 and detailed information on each of the schemes is presented in the Annex.

Following this, and as specified in the Tender proposal, we highlight and analyse several EU projects and studies on certification such as the Solar Keymark projects (I & II), the UNICE-BEUC e-Confidence project, the EFTA study on certification and marks in Europe, the EU Online Trustmarks study (SMART 2011/0022) and the study on a Pan-European Trustmark for E-Commerce. This analysis has given us a deeper insight into the success and failure factors impacting EU certification schemes.

The report then transposes the lessons learnt from the analysis of the EU-wide sectoral certification schemes, as well as the analysis of the EU certification research projects and studies, and presents the key challenges, requirements and success factors relevant to, and that will have to be considered in, creating and implementing an EU privacy certification scheme.

4 CRITERIA FOR EVALUATING AND COMPARING EU CERTIFICATION SCHEMES ACROSS SECTORS

The partners used the following criteria to evaluate and analyse the selected certification schemes.

1. Nature and type of scheme

This category shows the nature or type of scheme, based on the description given by its issuing organisation or derived from examining the scheme's documentation. Examples include: general, specialised, sector-specific, cross-sector. We specify if the scheme is based on a legal or industry standard.

2. Country

This describes the country of origin of the scheme-issuing organisation. In the event of multiple countries, we specify if the scheme applies across the entire EU or is limited to particular Member States. In some cases, there might be joint initiatives.

3. Inception (date/year)

This specifies the date (primarily year) on which the scheme was launched or became operational, based on information provided by its issuing organisation. Where relevant, we mention the date of operation or effect provided by legislation and rules governing the scheme. A milestone in the formal recognition of the scheme or initiative is indicated, if relevant. In some cases, there is a sort of "chronology" in the development history of the scheme.

4. Issuing organisation and type

This category outlines who issues the scheme. The partners identify instances where different bodies issue and operate the scheme and, if necessary, highlight any institutional, regulatory or de facto “hierarchy”. We specify the nature and type of the issuer. For instance, we identify whether the scheme issuer is a private company, industry association, non-profit organisation, public agency, regulatory body, consumer organisation, standardisation body and the level of its geographical coverage.

5. Objective of the scheme

This category presents the objectives of the scheme as outlined by its issuer or operator. Information sources include the scheme’s website and other public documentation.

6. Brief description of the scheme

This category describes the main features of the scheme, in terms of set-up, principles and operations.

7. Target of scheme

This category identifies the intended and actual targets of the certification schemes. Does the scheme certify a product, process, service or system? Is it specifically targeted at certain entities (such as product manufacturers, online sellers, service providers, product resellers, etc.)? This information comes from the scheme’s website and supporting documentation.

8. Beneficiaries of the scheme

This category identifies the stakeholders who benefit from the scheme – i.e., who are the entities or people who gain an advantage from the implementation and use of the scheme. These might be end users or consumers of certified products and services, traders, manufacturers, producers, service providers, etc. This information is as specified by the scheme; if not specified, it is based on the researcher’s determination of the groups or people that benefit from the scheme.

9. Regulatory framework underlying the scheme

This category identifies and presents the legal (or other compliance) framework that forms the basis of the scheme. It determines the specific legislation and rules that set out or form the basis for the creation and the operation of the scheme. It outlines the nature of the legal framework where applicable. For instance, it specifies if this is hard law (Directive, Regulation or decisions) or soft law (guidelines, recommendations, opinions), or an industry standard.

10. Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?

This category identifies if an overarching law was sufficient to create and implement the analysed certification scheme or whether there was a need for additional measures based on the core legislation. We identify what additional measures were required at EU and MS level.

11. Is there a requirement for establishment of a new dedicated authority? What is its legal status?

This category shows whether the scheme required the establishment of an authority solely devoted to administering or overseeing the scheme (both at EU and MS levels). Where possible, we identify the legal nature of the authority (i.e., independent, regulatory, state-controlled, public agency, non-profit).

12. What mechanism or entity controls the scheme at EU level?

This category identifies the mechanism or entity that controls the scheme at the EU level, if in place. We outline the role played by this mechanism. Is this role of a consultative, advisory or decision-making nature? Does the entity manage the scheme? Does the entity have overall oversight of the scheme? Is it allowed to control scheme processes and oversee the effective enforcement of the scheme? Does it have control over the national scheme authorities? What impact does it have on the scheme overall? We also highlight if there is any development in progress.

13. What level of integration have Member States achieved in the field?

This category presents the level of integration for the scheme amongst the Member States based on empirical information or as stated by the issuing organisation.

14. What are the requirements for implementation of the scheme at Member State level?

This category presents the various requirements of implementation of the scheme at the Member State level. These were sourced primarily from the regulatory or compliance framework underlying the scheme.

15. Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?

This category further examines the regulatory framework underlying the scheme and identifies disputes and challenges in relation to it. It also presents case law, if found. The partners sourced this information from leading academic and industry-based publications analysing the schemes. The case law was sourced from legal databases. We determine the good practice examples in (universal) application as well as factors hampering the scheme's operation along with any work in progress in relation to the scheme.

16. How many entities were certified in 2012? How many have been certified so far in 2013?

This category identifies the number of certified entities. These numbers relate to 2013 or 2012 (where 2013 figures were not available). We sourced this information from the scheme's website and public documents. When not available, we contacted the scheme issuer or operator to find this information. Since the absolute numbers of certified entities or products

may only indicate the uptake of a scheme, where data is available, we show the number of applications made.

17. What are the conditions for award of certification?

This category describes the conditions for award of certification according to the rules and requirements of the scheme.

18. What is the certification process?

This category provides information on the application of the conditions for award and describes the scheme's certification process as outlined on its website and in its public documents.

19. What are the costs related to the scheme?

This category identifies various costs related to the scheme. For instance, certification costs – certification fees, evaluation fees, financial dependencies concerning maintenance of a scheme and funding, e.g., does the running of the scheme depend on income from (successful) certification?

20. What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?

This category elaborates the approach to the enforcement of the mechanism and outlines (based on the scheme's rules and regulations) how and under what conditions awarded certification terminates (e.g., end of subscription period, suspension) or may be revoked (e.g., wrongful or deceptive application of seal, breaches of code, failure to abide by certification terms and conditions, non-payment of fees).

21. Describe the mechanism for receiving and responding to complaints.

This category identifies the complaints mechanism embodied in the scheme addressed to parties affected by concerns in relation to the scheme or the use of the scheme by its members. This complaints mechanism may be addressed to individuals (as consumers or otherwise) or other parties relying on the scheme (such as other scheme participants, manufacturers or service providers).

22. For how long is the certification valid?

This category presents information about the duration and validity of the certification. This may be as short as a year or longer than that. We identify how for long the initial certification is valid and present information about renewals (possibility, duration, validity, audits and checks of continued compliance).

23. In which Member States is the certification scheme valid and supported?

This category highlights whether and how the scheme has validity across Member States. Across which countries is the scheme valid and supported? If there are differences in validity, we highlight these.

24. If applicable, how frequently have updates been made to the certification scheme?

This category determines the frequency and means of updates to the scheme itself. Do the core regulations of the scheme make recommendations on this? How often is the scheme evaluated and its compliance checked against new political, legal, technological or societal developments? If any changes and updates are made to the scheme, what forms do these take?

25. What are the scheme's key success factors?

This category presents the key success factors of the scheme as evident from analysis of the scheme and taking into account other published critical analyses of the scheme.

26. Identify the criticisms, failures, concerns and challenges to the scheme.

This category identifies criticisms, failures, concerns and challenges in relation to the scheme (design, use, operation, effect). These are based on our analysis of the scheme and draws on other published critical accounts.

27. Other relevant issues

This category identifies any ancillary issues surrounding the scheme (that do not fit into the previous categories). These might be financial concerns or self-sufficiency of the scheme.

28. Evaluation of overall impact

Here, we make a considered analysis of the EU operation of the scheme based on our preceding analysis. We present how the scheme fares in relation to its surrounding ecosystem – particularly stakeholders such as relying parties and other scheme beneficiaries. We determine the overall implementation impact of the scheme.

29. Website

This category presents the official website address of the scheme.

5 EU CERTIFICATION SCHEMES – IDENTIFICATION AND ANALYSIS

This section focuses on the analysis and evaluation of certification schemes in a variety of sectors such as those mentioned above, i.e., network and information security, general product compliance, environment, financial auditing and accounting, entertainment, food industry and telecommunications. The partners analyse the schemes against the criteria advanced in the previous section. This enables us to determine how these schemes work, their key principles, how they relate to legislation, their key success and failure factors, the legal and practical set-up.

In this section, each scheme analysis has the following sub-heads: Overview, description, responsibility, sustainability, criticisms and concerns, and best practices (lessons for an EU privacy certification scheme).

Responsibility and sustainability are core elements of successful certification schemes. This is why we have chosen to specifically focus upon how the analysed schemes incorporate these.

The section on **responsibility** will determine who is responsible for the assurance provided by the scheme and meeting the scheme's requirements. Responsibility refers to the types of actions for setting up, operating and maintaining the scheme. More specifically, responsibility also refers to the identification of a 'responsible entity' in case of an issue, a complaint, a problem or a claim in relation to the scheme. The section analyses the scope of the responsibilities of each of the stakeholders of the scheme. This section will also determine how the sectoral certification schemes embody accountability requirements and are supervised, how infringements are detected and where necessary punished. Who can be held accountable if scheme requirements are breached? Which entity is responsible for taking charge of issues that arise? Who bears the responsibility for finding solutions and the relevant costs?

Sustainability refers to the ability of the scheme to maintain itself (in the short, medium or long term). We determine the elements that contribute to a scheme's sustainability. Sustainability could relate to economic issues, institutional factors, legal factors, business continuity or the critical mass that provides the rationale to sustain the scheme.

5.1 NETWORK AND INFORMATION SECURITY SECTOR

The importance of the network and information security sector is well established in the EU and evident in the policy and regulatory thrust in this area.² A report on security regulation and conformity assessment (commissioned by DG Enterprise and Industry) suggests

A particular area of concern is the vulnerability of ICT systems – which in themselves can be considered critical infrastructure – associated to critical infrastructures. There is a perception of a real and growing threat of cyber-attacks targeting critical infrastructure IT networks. At the same time the EU market for ICT / cyber-security is wide and unstructured, and in relation to Critical Infrastructure viewed as insufficient and often fragmented at a national level.³

The importance of this sector is reinforced by the EU Cybersecurity Strategy which outlines the means to strengthen network and information security across the EU.⁴ The Strategy aims at protecting the public and private sectors from intrusion and fraud, by strengthening cross-border co-operation and information exchange. The Strategy suggests that cyber security can only be sound and effective if it is based on fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights of the European Union and EU core values, protecting fundamental rights, freedom of expression, personal data and privacy. It further states that individuals' rights cannot be secured without safe networks and systems and that any information sharing for the purposes of cyber security, when personal data is at stake, should be compliant with EU data protection law and take full account of the individuals' rights in this field. The Strategy articulates five strategic priorities: achieving cyber resilience; drastically reducing cyber crime; developing cyber defence policy and capabilities related to

² See European Commission, "Critical Information Infrastructure Protection".

http://ec.europa.eu/information_society/policy/nis/strategy/activities/ciip/index_en.htm

³ Ecorys, *Security Regulation, Conformity Assessment & Certification Final Report – Volume I: Main Report*, European Commission, DG Enterprise & Industry, Brussels, October 2011.

http://ec.europa.eu/enterprise/policies/security/files/doc/secerca_final_report_volume__1_main_report_en.pdf

⁴ European Commission, Cybersecurity Strategy of the European Union: an Open, Safe and Secure Cyberspace, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, JOIN(2013) 1 final, Brussels, 7 Feb 2013.

the Common Security and Defence Policy (CSDP); developing the industrial and technological resources for cyber security; and establishing a coherent international cyberspace policy for the European Union and promoting core EU values.

ISO/IEC 27005 provides guidelines for information security risk management. It supports the general concepts specified in ISO/IEC 27001 and is “designed to assist the satisfactory implementation of information security based on a risk management approach”.⁵ The ISO/IEC 27005 revised and superseded the Management of Information and Communications Technology Security (MICTS) standards ISO/IEC TR 13335-3:1998 plus ISO/IEC TR 13335-4:2000.⁶ The ISO/IEC 27005:2008 standard is “applicable to all types of organizations (e.g., commercial enterprises, government agencies, non-profit organizations) which intend to manage risks that could compromise the organization's information security”.⁷ National level bodies such as CLUSIT (Italy)⁸, CLUSIF (France),⁹ CLUSIB Asbl (Belgium)¹⁰ are responsible for certification and quite a few commercial entities provide consultative services in relation to the scheme.

The main subject of analysis here is the Common Criteria for Information Technology Security Evaluation (CC) or international standard ISO/IEC 15408, stated to be “the driving force for the widest available mutual recognition of secure IT products”.¹¹

5.1.1 The Common Criteria (ISO/IEC 15408)

This section presents and discusses key aspects of the Common Criteria.

5.1.1.1 Overview

The Common Criteria have been developed for an objective evaluation of an IT product or system to assess whether it satisfies a defined set of security requirements. The Common Criteria certification is used for access control devices and systems, biometric systems and devices, boundary protection devices and systems, data protection, databases, detection devices and systems, smart cards and smart-card-related devices and systems, key management systems, multi-function devices, network and network-related devices and systems, operating system products for digital signatures and trusted computing.

The Common Criteria were developed through a combined effort of six countries: the United States, Canada, France, Germany, the Netherlands and the United Kingdom, on the basis of earlier standards: the European Information Technology Security Evaluation Criteria (ITSEC); the US Trusted Computer System Evaluation Criteria (TCSEC¹²); and the Canadian Trusted Computer Product Evaluation Criteria (CTCPEC).

⁵ IsecT Ltd., *ISO/IEC 27005:2011 Information technology - Security techniques - Information security risk management (second edition)*. <http://www.iso27001security.com/html/27005.html>

⁶ Ibid.

⁷ IsecT Ltd, op. cit., 2011.

⁸ Associazione Italiana per la Sicurezza Informatica. <http://www.clusit.it/index.htm>

⁹ Club de la Sécurité de l'Information Français. <http://www.clusif.asso.fr/en/clusif/present/>

¹⁰ Belgian Computer Security Club. <http://www.clusib.be/>

¹¹ Common Criteria Portal, “About the Common Criteria”. <http://www.commoncriteriaportal.org/ccra/>

¹² US Department of Defense Standard, *Trusted Computer System Evaluation Criteria*, Department of Defense, December 1985. <http://csrc.nist.gov/publications/history/dod85.pdf>

The Common Criteria for Information Security Evaluation were developed by the governments of Canada, France Germany, the Netherlands, UK, and US in the late 1980s. In the early 1990s, there was a joint effort, with significant support by the European Commission, to unify:

- the security evaluation standards developed by France, Germany, the Netherlands and the UK
- the US TCSEC standard developed by the United States Department of Defence, and
- the Canadian CTCPEC derived from TCSEC.

The purpose of the work, which was also supported by the EU Infosec Programme¹³ since 1990, was to create unified security evaluation criteria to avoid re-evaluation.

Criteria developments in Canada and European ITSEC countries followed the original US TCSEC work. The US Federal Criteria development was an early attempt to combine these other criteria with the TCSEC, and eventually led to the current pooling of resources towards production of the Common Criteria.

As mentioned, the original purpose of the scheme was to enable the certification of IT products and systems, principally those sold by companies to governments, mainly for defence or intelligence use. This certification is performed against one agreed set of standards, mutually recognised by participating governments. The participants in the agreement want:

1. To ensure that evaluations of Information Technology (IT) products and protection profiles are performed to high and consistent standards and manage to contribute significantly to confidence in the security of products and profiles;
2. To improve the availability of evaluated, security-enhanced IT products and protection profiles;
3. To eliminate the burden of duplicating evaluations of IT products and protection profiles;
4. To continuously improve the efficiency and cost-effectiveness of the evaluation and certification/validation process for IT products and protection profiles.¹⁴

Countries participating in the Arrangement recognise the CC certificates authorised by any other countries according to the terms of this Arrangement and the applicable laws and regulations of each Participant. The Arrangement referred to here is the *Arrangement on the Recognition of Common Criteria Certificates in the field of Information Technology Security* (or the Common Criteria Recognition Arrangement)¹⁵.

The target of the certification scheme of the Common Criteria and the Arrangement are industrial suppliers of IT products and systems, which in addition to their specific functionalities need to embed the assurance of specific security requirements.

¹³ European Commission, DG Information Society/C.4, InfoSec. <http://cordis.europa.eu/infosec/home.html> and <http://cordis.europa.eu/infosec/src/crit.htm> (archived)

¹⁴ Common Criteria Portal. <http://www.commoncriteriaportal.org/ccra/>

¹⁵ Common Criteria Portal, *Arrangement on the Recognition of Common Criteria Certificates in the field of Information Technology Security*, May 2000. <http://www.commoncriteriaportal.org/files/operatingprocedures/cc-recarrange.pdf>



Figure 1: The Common Criteria mark

5.1.1.2 Description of the scheme

The Common Criteria propose a grouping of 60 security functional requirements in 11 classes.¹⁶ The grouping in classes allows a standard evaluation in order to define an Evaluation Assurance Level (EAL). The CC also define:

- Packages, i.e., intermediate combinations of requirement components with a set of functional or assurance requirements that meet a subset of security objectives.
- Protection Profiles (PP), a set of implementation-independent set of security requirements for a class of Targets of Evaluation (TOEs) meeting specific consumer needs. They are created by a user or user community, which identifies security requirements for a class of security devices.
- Security Targets (ST), the document that identifies the security properties of the target of evaluation. The STs include a detailed set of product-specific information, which can be seen as a refinement of the Protection Profiles. The ST is usually published so that potential customers may determine the specific security features that have been certified by the evaluation.
- Security Functional Requirements (SFRs) specify individual security functions, which may be provided by a product. The Common Criteria presents a standard catalogue of such functions, which are documented in the security target (ST) document.
- Security Assurance Requirements (SARs) are the descriptions of the measures taken during development and evaluation of the product to assure compliance with the claimed security functionality. The Common Criteria provides a catalogue of these, and the requirements may vary from one evaluation to the next. They are documented in the Protection Profiles (PP) document.

The target of evaluation (TOE) is the product or system that is the subject of the evaluation.

The waterfall chart presented below links the specification framework to the TOE or product or system.¹⁷

¹⁶ Mead, Nancy, “The Common Criteria”, *Build Security In*, Department of Homeland Security, 10 Aug 2006. <https://buildsecurityin.us-cert.gov/articles/best-practices/requirements-engineering/the-common-criteria>

¹⁷ Ibid.

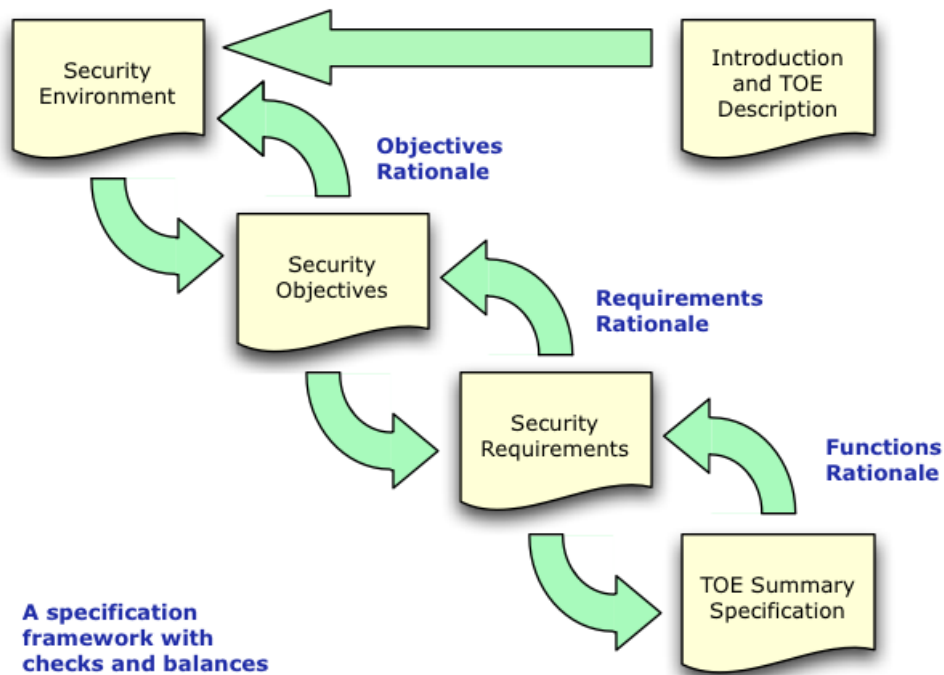


Figure 2: The PP/ST specification framework

Nancy R. Mead, a senior member of the technical staff in the Networked Systems Survivability Program at the Software Engineering Institute (SEI), has commented that “the successful use of the Common Criteria depends on an ability to define the required security capabilities. This should be done in a way that gives consideration to the mission or business, the assets requiring protection, and the purpose of the system under evaluation (the TOE).”¹⁸

The Common Criteria are based on Evaluation Assurance Levels (EALs), which are the numerical rating from 1 to 7 describing the depth and rigour of an evaluation. Each EAL corresponds to a package of security assurance requirements (SARs). The increasing assurance levels reflect added assurance requirements that must be met to achieve Common Criteria certification. The EAL level does not measure the security of the system itself; it simply states at what level the system was tested, meeting all foreseen assurance requirements. There are testing organisations in 15 of the 26 partner countries in the Common Criteria Arrangement.

The Common Criteria are not regulated by means of laws and regulations, or by EU Directives. The basis is the 15408 ISO/IEC standard and the regulatory provisions of the Arrangement.

It needs to be emphasised that, according to Article 2 of the Arrangement,

It is mutually understood that, in respect of IT products and protection profiles, the Participants plan to recognise the Common Criteria certificates which have been authorised by any other certificate authorising Participant in accordance with the terms of this Arrangement and in accordance with the applicable laws and regulations of each Participant. This Arrangement covers claims of compliance against any of the Common Criteria assurance components required for Evaluation Assurance Levels 1 through 4. Extension of the scope may be agreed by the Participants in this Arrangement at any time, in accordance with the provisions of Article 14, by adding other assurance levels or components.

¹⁸ Ibid.

Thus, the application of the agreement and the standards are always subject to applicable national laws.

The bases of this scheme are:¹⁹

- the Common Criteria,
- the related ISO/IEC 15408 standard,
- the Common Criteria Recognition Agreement,
- the supporting documentation for specific assurance procedures,
- the upgrading documentation related to the Common Criteria development.

The Common Criteria and the Arrangement have established and regulated all of the aspects, including the management bodies. The process is fundamentally based on a peer-to-peer operation of the certification and monitoring of products.

Participating countries need to have established a national operating scheme for CC and ISO/IEC 15408. As the analysis of the scheme indicates, there does not seem to be the need of an EU-wide controlling mechanism, apart from the non-mandatory ISO/IEC 15408. The Common Criteria do not have an EU foundation, although the EU has been a key player in integrating the original national schemes. Globally, the integration of countries within the Agreement is based on a practical and functional rationale, which is also the key determinant of the evolving perspective of the Common Criteria and the Arrangement.

5.1.1.3 Responsibility

The Arrangement works on mutual recognition. It is managed by a Management Committee where all partners are represented on a peer basis. The only differentiation concerns certificate-authorising participants and certificate-consuming participants. The certification process is carried out on a peer basis and the partners in the Arrangement are committed to finding common solutions to upcoming issues. Partners in the Common Criteria Arrangement are committed to solving disagreements and to not enforcing the agreement in any domestic or international court. The termination of the agreement is unilateral and the decadence as a member is related to withdrawal, or, de facto, after the termination of compliant status of any represented certification body.

The Common Criteria Arrangement does not mention the possible breaches of the CC themselves, or the possibility of claims for actual damage. All dispute resolutions are handled by the Management Committee, but no specific rules are set up on the specific issues of responsibility and accountability. The operation of the Arrangement is actually based on a co-operative approach and shared processes.

5.1.1.4 Sustainability

The scheme appears to be sustainable because of the commitment of the participants to support it. It appears to be completely integrated with the national certification schemes and their operational structures. The motivation for keeping up the arrangement and the related Common Criteria is embedded in the interest for shared security assurance. Therefore, the sponsorship by the Arrangement participants and their continued work on the Common

¹⁹ See <http://www.commoncriteriaportal.org/>. Specifically, refer to <http://www.commoncriteriaportal.org/ccra/>

Criteria and the Arrangement guarantee its sustainability. There are multiple interests favouring the sustainability of the CC and the Arrangement:

- The public and private IT procurers
- The IT industry
- The government bodies in charge of IT security and its certification.

5.1.1.5 Criticisms and concerns

Our research found no particular criticisms of the Common Criteria Arrangement. According to a stakeholder interview, the Arrangement is properly designed and operates smoothly. The main criticisms of the Common Criteria are as follows:

- If a product is certified, it does not necessarily mean that it is completely secure. This is possible because the process of obtaining a CC certificate allows the producer to restrict the analysis to certain security features and to make certain assumptions about the operating environment and the strength of threats.
- The CC recognises a need to limit the scope of evaluation in order to provide cost-effective and useful security certifications. Evaluations activities are therefore only performed to a certain depth, use of time and resources, and offer reasonable assurance for the intended environment.
- The TOE is applicable to networked or distributed environments only if the entire network operates under the same constraints and resides within a single management domain.
- There are no security requirements that address the need to trust external systems or the communications links to such systems.
- Common Criteria is expensive: with enterprise security management, a vendor usually rewrites its own custom security target or the product requirements documents that are based on the security target.²⁰
- In relation to enterprise security management, IT security professionals suggest that under “Common Criteria, comparisons in the ESM space are not as straightforward because each product has its own security target document”.²¹

The benefits of using such criteria are that they allow customers to make informed security decisions in several ways. However, according to Eric Bidstrup, the Group Program Manager (Windows Server) at Microsoft, the Common Criteria have failed to gain the popularity required and the broad acceptance within the private sector or any organisations beyond government agencies.²² Bidstrup states that “when considering what types of software vulnerabilities could occur, there are three general categories of potential vulnerabilities: design vulnerabilities, implementation vulnerabilities, and deployment vulnerabilities. Where protection profiles (PP) have been defined, CC arguably does a reasonable job in addressing *design vulnerabilities*. However, as applied (at time of writing), CC is arguably deficient in two respects: first, PPs don’t currently exist for many categories of products (e.g., mobile devices and instant messaging applications) and second, an evaluation is not

²⁰ Mead, Nancy, “The Common Criteria”, *Build Security In*, Department of Homeland Security, 10 Aug 2006. <https://buildsecurityin.us-cert.gov/articles/best-practices/requirements-engineering/the-common-criteria>

²¹ Brickman, Joshua, “Common Criteria – a good concept in transformation”, Security Management Blog, 25 March 2010. <http://community.ca.com/blogs/iam/archive/2010/03/25/common-criteria-a-good-concept-in-transformation.aspx>

²² Bidstrup, Eric, “Common Criteria and Answering the Question ‘Is it Safe’”, Security Development Lifecycle Blog, 20 Dec 2007. <http://blogs.msdn.com/b/sdl/archive/2007/12/20/common-criteria-and-answering-the-question-is-it-safe.aspx>

internationally required to evaluate a given product against a PP.²³ Bidstrup also highlights that the CC fail to reasonably address implementation vulnerabilities.²⁴

5.1.1.6 Success factors and best practices

The key success factors of the CC scheme is the co-operation and integration of activities of national authorities and the interest of vendors in investing in mutually recognised certifications of the security of IT products. Another success factor manifests in the commitment of Participants in the Arrangement in promoting and developing it.

In a way, the Common Criteria themselves and the Common Criteria Arrangement can be considered a best practice itself. Through the Arrangement, the partners are committed to a process of promotion and development of the Common Criteria and the related deployment processes.

The operation of the Common Criteria and the Arrangement is a best practice of running a peer-to-peer assessment process. We have to say that the subject of the assessment and the baseline for this assessment is very specific and focused.

5.1.1.7 Conclusion

The actual impact of the use of CC and the benefits of the CC agreement are clear and straightforward in theory. Advantages belong to the different aspects such as:

- commercial competitiveness,
- cost savings due to the mutual recognition,
- support to IT procurement, and in particular to public procurement of systems, and
- the availability of IT products and systems with a certain level of security, even if the comprehension might be complex and require specific knowledge and expertise.

These aspects, if adequately embodied in an EU privacy seals scheme, would contribute to its success at the international level. More specifically, an EU privacy seals scheme should be able to bring about a cost and resource saving through mutual recognition as well as bring added value to the ecosystem in which it operates.

Countries that are globally significant IT players participate in the CC Arrangement and work toward its development. The CCRA Management Committee's database of certified products has a significant number of products, which might testify to the success of the CC in the last 15 years of their co-ordination and development.²⁵

On the other hand, the shortcomings of the application of the Common Criteria relate to the definition of the scope of the risks, the target of evaluation, the precise and absolute recognition of the levels of risk to which the products and systems are exposed to and the understanding of the changing factors which might have a major effect on the actual security assessment.

²³ Ibid.

²⁴ Bidstrup, op. cit., 20 Dec 2007.

²⁵ Common Criteria Portal, "Certified Products". <http://www.commoncriteriaportal.org/products/>

5.2 GENERAL PRODUCT COMPLIANCE

The EU places a high degree of importance on the health and safety of consumers and EU legislation supports this objective. One of the means through which this is achieved is through mandatory product certification. In this section, we analyse CE marking which is required for products placed on the market within the European Economic Area (EEA). This marking certifies that such products have been assessed prior to placement in the market and meet EU safety, health and environmental protection requirements.²⁶

5.2.1 CE marking scheme

This section presents the scheme analysis for the CE marking scheme.

5.2.1.1 Overview

The CE marking scheme is a mandatory product self-certification scheme applicable across a variety of specified sectors and targeted at product manufacturers, importers and distributors of products within the EU.²⁷ The scheme became operational in 1993 under the organisational responsibility of the European Commission. The scheme indicates a product's compliance with EU legislation and facilitates the free movement of products within the European market. The CE marking is valid in all EU and European Free Trade Association (EFTA) Member States. The logo of the CE marking scheme is below:



Figure 3: CE Marking logo

5.2.1.2 Description

The CE marking is defined as “a marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in Community harmonisation legislation providing for its affixing”.²⁸ The CE marking is intended to be a multiple-sector certification scheme; although it refers exclusively to manufacturing, designated products that fall within its 23 categories may vary substantially (for example, the scheme covers toys, electrical products, machinery, personal protective equipment and lifts).

Council Decision 93/465/EEC harmonises the rules for affixing and use of the CE marking.²⁹ Other relevant legislation is the New Approach Directives³⁰ for the European Economic Area

²⁶ European Commission, DG Enterprise and Industry, “CE Marking”.
<http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/>

²⁷ Ibid.

²⁸ European Parliament and the Council, Decision No 768/2008/EC of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, *OJ L* 218, 13 Aug 2008, pp.82-128.

²⁹ The Council of the European Communities, Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives, *OJ L* 220, 30 Aug 1993, pp. 0023-0039.

(EEA), consisting of the 28 EU Member States, and the EFTA countries (Iceland, Liechtenstein and Norway), according to which manufacturers must affix the CE marking before they put their products on the market. The New Legislative Framework,³¹ which modernises the New Approach, put in place additional legal measures to strengthen the role and credibility of the CE marking.³² Other specific European Directives for specific product groups also apply, all as implemented by national legislation.³³

According to the CE marking scheme, it is up to the manufacturer (or other relevant entity) to affix the marking, confirming that the product in question conforms to the applicable regulations. Product manufacturers must ensure that their products comply with all legal requirements.³⁴ Though a manufacturer is permitted to self-certify, the CE marking process may involve the use of notified bodies (organisations that have been nominated by member governments and notified by the European Commission) to assess the conformity of a product, if required by legislation.³⁵ Member States notify relevant bodies and only such bodies can be used as have been duly notified. Public authorities in the EU Member States along with the European Commission supervise the CE marking scheme.³⁶

One must note, however, that the CE marking “does not indicate that a product was made in the EEA, but merely states that the product has been assessed before being placed on the market”³⁷ and only suggests that the manufacturer has:

- verified that the product complies with all relevant essential requirements (e.g., health and safety or environmental requirements) laid down in the applicable directive(s), and
- if stipulated in the directive(s), had it examined by an independent conformity assessment body.³⁸

Supervision and enforcement of CE marking is the responsibility of national public authorities in EU Member States in co-operation with the European Commission.³⁹ Member States are

³⁰ For the full list, see European Commission, *Guide to the Implementation of Directives based on the New Approach and the Global Approach*, Office for Official Publications of the European Communities, 2000, p. 12. http://ec.europa.eu/enterprise/policies/single-market-goods/files/blue-guide/guidepublic_en.pdf

³¹ The New Legislative Framework was adopted by the Council on 9 July 2008 and published in the Official Journal on 13 August 2008, see European Commission Enterprise and Industry, “New Legislative Framework for Marketing of Products,” 2008. http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/new-legislative-framework/index_en.htm.

³² This includes: European Parliament and the Council, Regulation (EC) No 765/2008 of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products *OJ L* 218, 13 Aug 2008, pp. 30-47; European Parliament and the Council, Decision No 768/2008/EC of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, *OJ L* 218, 13 Aug 2008, pp. 82-128; European Parliament and the Council, Regulation (EC) No 1221/2009 of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) *OJ L* 342, 22 Dec 2009, pp. 1-45.

³³ See European Commission, *Guide to the implementation of directives based on the New Approach and the Global Approach*, Office for Official Publications of the European Communities, Luxembourg, 2000.

³⁴ European Commission, “CE Marking”.

http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/index_en.htm

³⁵ For a list of notified bodies, see European Commission, Nando (New Approach Notified and Designated Organisations) Information System. <http://ec.europa.eu/enterprise/newapproach/nando/>

³⁶ European Commission, “CE Marking: FAQs”.

http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/faq/index_en.htm

³⁷ European Commission, “CE Marking - Basics and FAQs”. <http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/about-ce-marking/>

³⁸ Ibid.

obliged to take appropriate measures to protect the CE marking. In particular, they are obliged:

- not to prohibit, restrict or impede the placing on the market and putting into service of products that comply with the applicable New Approach directives; and
- to take any measures necessary to ensure that products are placed on the market and put into service only if they do not endanger the safety and health of persons, or other interests covered by the applicable directives, when correctly constructed, installed, maintained, and used in accordance with their purpose.⁴⁰

Member States are also required to “refrain from introducing any reference to another conformity marking into their national regulations, which would signify conformity with objectives that relate to the CE marking”.⁴¹

For a product to be certified, it must comply with the essential requirements of the relevant EU legislation. The certification process involves the following steps:

- Identify the directive(s) and harmonised standards applicable to the product
- Verify the product-specific requirements
- Identify whether an independent conformity assessment is required from a Notified body
- Test the product and check its conformity
- Draw up and keep available the required technical documentation
- Affixation of the CE marking to product and EC Declaration of Conformity⁴²

Costs of certification vary. It has not been possible to obtain an estimate of costs related to certification or the operation of the scheme.

Grounds on which certification can be terminated or revoked include non-conformance of product to relevant requirements. Continuous breach of Directive requirements may lead to restriction or a prohibition from entering the EU or withdrawal of product from the market.

5.2.1.3 Responsibility

Under the CE marking scheme, the manufacturer is solely responsible for ensuring that the marked product conforms to all the applicable legal regulations.⁴³ Regulation 765/2008 and Decision 768/2008 outline the responsibilities in relation to the CE marking. Where required by legislation, notified bodies may be involved in the certification process to assess the conformity of a product.⁴⁴

National public authorities in the EU Member States along with the European Commission supervise the CE marking scheme.⁴⁵ The Commission’s role includes: co-ordination of the national programmes; organisation of market surveillance (monitoring of complaints,

³⁹European Commission, “Market surveillance”. http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/market-surveillance/index_en.htm

⁴⁰European Commission, *Guide to the implementation of directives based on the New Approach and the Global Approach*, Office for Official Publications of the European Communities, Luxembourg, 2000.

⁴¹Ibid.

⁴²European Commission, “CE Marking – What does it really mean?” Memo, 15 June 2010. http://europa.eu/rapid/press-release_MEMO-10-257_en.htm

⁴³European Commission, “CE Marking”. http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/index_en.htm

⁴⁴For a list of notified bodies, see Nando (New Approach Notified and Designated Organisations) Information System. <http://ec.europa.eu/enterprise/newapproach/nando/>.

⁴⁵European Commission, “CE Marking: FAQs”. http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/faq/index_en.htm

accidents, resources, powers, etc.); national measures for market surveillance (ensure adequate checks by national authorities and co-ordinate rules for entering the manufacturer's premises or destroying unsafe products, if necessary, informing the public, co-operating with the relevant stakeholders, etc.); co-ordination of the organisation of applying restrictive measures; co-operation and exchange of information (for serious and non-serious risks); sharing of resources, etc.⁴⁶

To protect against counterfeiting of marks, which is one of the prime challenges of the CE marking scheme, each Member State has put in place procedures, measures and sanctions (which may vary) based on their national administrative, civil and criminal laws. Depending on the seriousness of a CE marking infringement, economic operators may be liable to a fine and, in some circumstances, imprisonment. Products may be withdrawn or recalled from the market. However, if the product is not regarded as an imminent safety risk, the manufacturer may be given the opportunity to bring the product into compliance with the applicable legislation rather than being obliged to take the product off the market.⁴⁷ This is significant as it introduces a certain flexibility, and provides the manufacturer with the incentive to bring the product quickly into compliance.

5.2.1.4 Sustainability

The CE marking scheme has been operational since 1993. The scheme is widely accepted within and beyond the EU (the European Union and other countries such as the USA, Japan, Canada, Australia, New Zealand and Israel have mutual recognition agreements in relation to conformity of assessment). Consequently, CE marking is now found on many products from these countries). Switzerland and Turkey (which are not members of the EEA) also require products to bear CE marking as an affirmation of conformity. The scheme is also widely supported by government and industry through collaborations and technical assistance programmes.⁴⁸ This has contributed to the scheme's continued success and sustainability.

5.2.1.5 Criticisms and concerns

An EFTA-commissioned study identified the following concerns in relation to the CE marking scheme:

- Mistrust from professional buyers, particularly when certification is only based on self-certification
- Lack of stakeholder confidence in the CE marking (manifest implicitly in the demand from the distribution channels for marking of higher risk products)
- Lack of efficient market surveillance on the Internal Market (free movement of non-compliant unsafe CE-marked products)
- Sovereignty of some national schemes (e.g., thermal insulation) over CE marking in a number of European countries;

⁴⁶ European Commission Directorate-General for Enterprise and Industry, *CE: CE marking makes Europe's market yours!* European Commission, Brussels, 2011. http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/downloads/ce_brochure_en.pdf

⁴⁷ European Commission, "CE Marking – Basics and FAQs". http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/about-ce-marking/index_en.htm

⁴⁸ Hanson, David, *CE Marking, Product Standards and World Trade*, Edward Elgar Publishing Ltd, Gloucester, 2005, p. 193. This author highlights how the European Union is pursuing a "fairly aggressive program of international promotion". David Hanson is an Associate Professor of International Business in the Marketing Division of the Business School at Duquesne University with an interest in the trade impact of the European CE marking and has written three books in this area.

- Non-acceptance of CE marking in some countries
- National technical barriers related to product approval, i.e., the CE mark is not enough and more stringent national standards are required to be passed.⁴⁹

In addition, there are other concerns and challenges that impact the scheme. For instance, the problem of counterfeiting or misuse of the marking. The European Commission website itself recognises this problem and states that “unfortunately due to counterfeiting or misuse of the marking, there is never a 100 per cent guarantee that a product bearing the CE marking is safe”.⁵⁰ In relation to this, a UK study found that Chinese manufacturers were using deceptive practices to obtain conformity reports, “submitting well-engineered electrical products to obtain conformity testing reports, but then removing non-essential components in production to reduce costs”.⁵¹ A test of 27 electrical chargers found that all of the eight legitimately branded with a reputable name met safety standards, but none of those unbranded or with minor names did, despite bearing the CE marking; non-compliant devices were actually potentially unreliable and dangerous, presenting electrical and fire hazards.⁵²

The Commission has sought to address some of these concerns. For instance, it has proposed measures to strengthen market surveillance in the Member States.⁵³

5.2.1.6 Success factors and best practices

Despite having its challenges and issues, the CE marking scheme constitutes a useful example for EU privacy certification efforts: although singular in design, it is applicable to multiple sectors; it is also a result of co-operation between industry and governments, achieving thus both global acknowledgement and subject matter relevance at any given time. However, only those products, technologies or processes (particularly those of a more general or universal nature) for which it is possible to achieve EU-wide policy and regulatory consensus might be more amenable for CE type certification.

The EFTA study identified the following successful elements of the CE marking scheme:

- Ability to enable free movement of certified products within the EU.
- Wide acceptance within and beyond the EU (there are numerous “Agreements on Mutual Recognition of Conformity Assessment” between the European Union and other countries such as the USA, Japan, Canada, Australia, New Zealand and Israel. Consequently, CE marking is now found on many products from these countries). Switzerland and Turkey (which are not members of the EEA) also require products to bear CE marking as an affirmation of conformity.
- Support from both government and industry.⁵⁴

⁴⁹ Consumer Research Associates Ltd, *Certification and Marks in Europe: A Study commissioned by EFTA*, Brussels, January 2008. <http://www.efta.int/~media/Files/Publications/Study%20Certification%20Marks/full-report.ashx>

⁵⁰ European Commission, CE Marking – Basics and FAQs. <http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/about-ce-marking/>

⁵¹ Buckinghamshire Trading Standards, *What's in your socket?* September 2008. http://www.buckscc.gov.uk/media/137366/60600_Booklet_proof.pdf

⁵² Ibid.

⁵³ European Commission, Market surveillance. http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/market-surveillance/index_en.htm

These elements are also essential requirements for a successful European privacy certification scheme.

5.2.1.7 Conclusion

The CE marking scheme seems extremely relevant and useful in terms of transposition to privacy seals. It is a long-established scheme with a good legal framework. It has a strong legal framework backing it and receives a good level of support from the European Commission and national Member States. What the CE marking does for general product compliance, an EU privacy seal could seek to achieve for privacy protection. In particular, this scheme presents the most relevant model if the EC wishes to implement a mandatory self-certification type of scheme for privacy certification. An EU privacy seal could learn from how the scheme has developed into a widely successful and publicly recognised one. In particular, the experience of the CE marking scheme shows the necessity of being able to put in place strong market surveillance to protect from the effects of counterfeiting, misuse or deception in relation to such schemes. It also shows the need for strong support from national authorities in implementing and enforcing the scheme. In addition, it shows the need (applicable for the success of any EU certification scheme) for Member States to refrain from introducing competing certification schemes.

5.3 ENVIRONMENT

Environmental certification schemes have become “a significant and innovative venue for standard setting and governance in the environmental realm”.⁵⁵ There are various kinds of environmental certification schemes: forest certification schemes, recycled products (recycled logo), renewable energy, building design, press, eco-labelling of products, sustainable fisheries, schemes relating to biofuels⁵⁶, etc. We have shortlisted three European schemes for further analysis: the EU Ecolabel scheme applicable to a variety of products,⁵⁷ Integrated Pollution Prevention and Control (IPPC) certification for industrial and agricultural activities with a high pollution potential,⁵⁸ and the Green Dot program (for packaging and packaging waste).⁵⁹

Environmental certification schemes may be a suitable model for privacy certification schemes in that they attempt to stand in for complex interactions of technology, policy and economic and social factors that are hard for the public to understand in their totality. Furthermore, environmental schemes often attempt to understand the impact of a set of industrial practices in a broad sense (literally *upon the environment*) rather than simply upon an individual consumer. Additionally, environmental pollution, like certain types of privacy

⁵⁴ Consumer Research Associates Ltd, *Certification and Marks in Europe: A Study commissioned by EFTA*, Brussels, January 2008. <http://www.efta.int/~media/Files/Publications/Study%20Certification%20Marks/full-report.ashx>

⁵⁵ Auld, Graeme, Lars H. Gulbrandsen and Constance L. McDermott, “Certification Schemes and the Impacts on Forests and Forestry,” *Annual Review of Environment and Resources*, Vol. 33, 2008, pp. 187-211 [p. 187].

⁵⁶ 2BSvs (Biomass Biofuels voluntary scheme), Bonsucro EU, Greenergy (Greenergy Brazilian Bioethanol verification programme), ISCC (International Sustainability and Carbon Certification), RBSA (Abengoa RED Bioenergy Sustainability Assurance), RSB EU RED (Roundtable of Sustainable Biofuels EU RED), RTRS EU RED (Round Table on Responsible Soy EU RED).

⁵⁷ European Commission, “The EU Ecolabel”. <http://ec.europa.eu/environment/ecolabel/>

⁵⁸ Europa, “Integrated Pollution Prevention and Control (until 2013)”.

http://europa.eu/legislation_summaries/environment/waste_management/128045_en.htm

⁵⁹ PRO Europe. <http://www.pro-e.org/>

harm, accumulates over time.⁶⁰ This may have benefits for approaches to privacy protection that attempt to understand and incorporate the perspective of privacy as having a social benefit in addition to being an important individual right.

5.3.1 The EU Ecolabel scheme

5.3.1.1 Overview

The EU Ecolabel scheme, launched in 1992 as a Europe-wide, voluntary, environmental scheme to build consumer trust, has awarded more than 1,300 licences (by the end of 2011) and more than 17,000 different products carry the label. The scheme aims to guarantee a “high level of transparency, reliability and scientific credibility, which meets customers’ green demands”.⁶¹



Figure 4: The EU Ecolabel logo

5.3.1.2 Description

The EU Ecolabel is a voluntary environmental performance certificate awarded to products and services. These products and services have to meet specific, identified criteria depending on the product groups, which reduce overall environmental impact. The EU Ecolabel scheme promotes the production and consumption of products that have a reduced environmental impact in comparison to existing products on the market. The scheme also aims to provide consumers with accurate, non-deceptive, science-based information on the environmental impact of products.

The EU Ecolabel purports to guarantee a high level of transparency, reliability and scientific credibility, which meets what are understood as customers’ green demands. Unlike other environmental information or labelling, it is intended that no technical understanding is required to read and understand the label. By choosing Ecolabelled products, it is easy for consumers to make an environmentally friendly choice. The EU Ecolabel logo is used for different product groups. This makes it easier to recognise quality products with better environmental performance, protecting the interests of consumers, producers and the environment.

The EU Ecolabel was launched in 1992 when the European Community decided to develop a Europe-wide voluntary environmental scheme that consumers could trust. Since then, there has been an increase in the products and services awarded the EU Ecolabel every year. A

⁶⁰ Solove, Daniel J., “Why privacy matters even if you have ‘nothing to hide’”, *The Chronicle of Higher Education*, 15 May 2011. <http://chronicle.com/article/Why-Privacy-Matters-Even-if/127461/>

⁶¹ European Commission, “The EU Ecolabel”. <http://ec.europa.eu/environment/ecolabel/>

licence gives a company the right to use the EU Ecolabel logo for a specific product group. Initially set up by Regulation 880/92, the scheme is currently covered by Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel.⁶²

5.3.1.3 Responsibility

Whilst the scheme is administered by the Commission, Regulation 66/2010 called for establishment of the European Union Ecolabelling Board (EUEB) consisting of the representatives of the competent bodies of all the Member States, the Competent Bodies of Iceland, Liechtenstein and Norway and the representatives of the following organisations:

- European Environmental Bureau (EEB)⁶³
- Bureau Européen des Consommateurs/The European Consumer Organisation (BEUC)⁶⁴
- European Confederation of Associations of Small and Medium-Sized Enterprises (CEA-PME)⁶⁵
- Business Europe⁶⁶
- The European Community of Consumer Cooperatives (EUROCOOP)⁶⁷
- European Association of Craft, Small & Medium-Sized Enterprises (UEAPME)⁶⁸
- EuroCommerce.⁶⁹

The Board contributes to the development and revision of EU Ecolabel criteria and to any review of the implementation of the EU Ecolabel scheme. It also provides the Commission with advice and assistance in these areas and, in particular, issues recommendations on minimum environmental performance requirements.

Competent Bodies are independent and impartial organisations designated by states of the European Economic Area within government ministries or outside the ministries. They are responsible for implementing the EU Ecolabel scheme at the national level and should be the first point of contact for any questions from applicants. They specifically assess applications and award the EU Ecolabel to products that meet the criteria set for them. As such, they are responsible for ensuring that the verification process is carried out in a consistent, neutral and reliable manner by a party independent from the operator being verified, based on international, European or national standards and procedures concerning bodies operating product-certification schemes. The Competent Bodies meet three times a year at the Competent Body Forum in Brussels to exchange experiences and ensure a consistent implementation of the scheme in different countries.

Product group criteria are usually valid for a period of three to five years, depending on the Commission decision for each product group. This allows the criteria to reflect technical innovation, such as evolution of materials or production processes, and emission reductions and changes in the market. Ecological criteria are reviewed prior to their expiration and may be revised. The board contributes to the revision of the criteria, but the Commission is

⁶² *OJ L* 27, 30 Jan 2010, pp.1-19.

⁶³ <http://www.eeb.org/>

⁶⁴ <http://www.beuc.org/>

⁶⁵ <http://www.cea-pme.org/>

⁶⁶ <http://www.buinesseurop.eu/>

⁶⁷ <http://www.eurocoop.org/en/>

⁶⁸ <http://www.ueapme.com/>

⁶⁹ <http://www.eurocommerce.be/>

responsible for their final drafting. If criteria are revised, licence holders need to renew their contract. However, if criteria are extended, their contract is automatically renewed as long as the criteria remain valid for a product. Holders may use the EU Ecolabel starting from the date it is awarded until the end of the period of the validity of the criteria.⁷⁰

The adoption and revision process can be initiated by the Commission, Member States, Competent Bodies and other stakeholders, in consultation with the board. Such parties complete a form explaining the need for labelling a new product or service and submit this to the Ecolabel Board. Applicants to lead a product development or revision process must display expertise in the product area, the ability to neutrally lead the process, and the ability to form a consortium. If accepted by the Eurolabel Board, this party sets up an ad-hoc working group to conduct feasibility studies, and other appropriate analyses. Draft criteria are then discussed by the Board, relevant services in the Commission, and the EUEB for approval. The criteria are voted upon by a regulatory committee of national authorities and, if approved, are adopted through a Commission Decision and published in the Official Journal.

5.3.1.4 Sustainability

The Ecolabel was launched in 1992 and, according to the scheme, the products and services awarded the Ecolabel has increased every year. The scheme is public facing and voluntary, therefore reliant upon sustaining a positive public reputation and recognition. If public appreciation is lacking, applicants will be less keen to pay the associated costs. Applicants meet the costs of having their product tested by independent laboratories. Annual fees for the scheme are intended to be relatively low, and are provided in the following table:

Size of enterprise	One-off application fee	Annual fee
Micro-enterprise	€200-350	Maximum €18,750
SME and firms from developing countries	€200-600	Maximum €18,750
All other companies	€200-2,000	Maximum €25,000

Table 1 Ecolabel scheme costs

Application fees can be reduced by 30 per cent for companies registered under the European Eco-Management and Audit Scheme (EMAS), or by 15 per cent for companies certified under ISO 14001. The annual fee may either be a flat fee or based upon annual value of sales within the EU (not more than 0.15 of that value).

5.3.1.5 Criticisms and concerns

FERN (an NGO focused on forest issues) issued a report in April 2010 titled “EU Ecolabel allows forest destruction – The case of Pindo Deli”⁷¹ which argued that the Ecolabel had been awarded to two brands of photocopier paper which did not deserve it due to the deforestation activities of the paper’s manufacturers (Pindo Deli). FERN’s investigation concluded that there was insufficient evidence for the public to check the basis for the award of the Ecolabel. Following this report, the European Commission asked AFNOR, the French EU Ecolabel Competent Body, to carry out an in-depth investigation to verify Pindo Deli's compliance with

⁷⁰ European Commission DG Environment, Product groups and criteria, 12 July 2013.

<http://ec.europa.eu/environment/ecolabel/products-groups-and-criteria.html>

⁷¹ Land, Chris, “EU Ecolabel allows forest destruction: The case of Pindo Deli”, FERN, 9 April 2010. http://www.fern.org/sites/fern.org/files/FERN_PindoDeli-final_0.pdf

the EU Ecolabel criteria. This investigation was requested as the Commission was very concerned about the situation that could have been potentially very damaging for the EU Ecolabel image in the eyes of consumers and other stakeholders. The AFNOR audit report concluded that “Corrective actions were required for items to be corrected which have been supplied for review, and which will also be reviewed during the next audit (October 2011). The items to be corrected do not call into question the legality of the fibre source and the sustainable forest management.”⁷²

Industry has also criticised the EU Ecolabel on the extent to which the EU Ecolabel certification decision-making by National Authorities was being conducted on the basis of science. This was based upon the rejection by a majority of Member States at the European Ecolabel Board (EUEB) of the Commission’s proposed criteria for official risk assessment. The industry bodies reiterated the need for clear and uniform framework of standards.⁷³

5.3.1.6 Success factors and best practices

As stated already, by the end of 2011, more than 1,300 licences had been awarded, and the EU Ecolabel can be found on more than 17,000 products. It potentially covers a huge range of products and services, including all non-food and non-medical, and is recognised across Europe. It has a relatively simple application process with discounts for SMEs, micro-enterprises and applicants from developing economies. Whilst overseen by the Commission, the EU Ecolabel process does include the involvement of a wide range of stakeholders, including industry primarily as members of the EUEB. Because the scheme works on a European level, it goes beyond the pre-existing national ecolabels that are often only known within national borders. This is also intended to avoid the proliferation of environmental labelling schemes and encourage higher environmental performance in all sectors for which environmental impact is a factor in consumer choice

The EU Ecolabel meets the International Organization for Standardization (ISO) definition for a Type 1 Ecolabel.⁷⁴ This means the EU Ecolabel is voluntary, based on multiple criteria, and is awarded by a third party to indicate overall the environmental preferability of a product within a particular product category, based on an assessment of the product’s life cycle.

5.3.1.7 Conclusion

The EU Ecolabel is a widely known and well established scheme, the voluntary nature of which means that is not threatening to industry, but can potentially be beneficial. Of the environmental certification schemes examined in this section, the EU Ecolabel bears the greatest resemblance to existing privacy seal schemes associated with privacy protection on websites, in that award of the seal allows the recipient to display the scheme’s logo, and that it is assumed that the benefit of doing so will exceed the costs of participation and meeting the scheme’s standard. It is voluntary, carries relatively low costs, and confers the rights to

⁷² AFNOR, “Conclusions from AFNOR Certification following APP audit reports for the EU Ecolabel ‘Copying and graphic paper’”, Memo, 16 Sept 2011.

<http://ec.europa.eu/environment/ecolabel/news/archives/pinto.pdf>

⁷³ Benassi, Andrea, Wilfried Haensel, Brigitte Dero, Rudi Bornms, Jean-Pierre de Grieve, Alexandre Dangis, Veronique Steukers, Luca Bielli, William H., Lakin and Hubert Creyf, “European ecolabel scheme threatened by failure to take account of scientific assessment”, UEAPME, 17 June 2008.

http://www.ueapme.com/docs/pos_papers/2008/080616_cross-industry_paper_ecolabel_and_science.pdf

⁷⁴ Global Ecolabelling Network, “What is Ecolabelling?” 2013.

http://www.globalecolabelling.net/what_is_ecolabelling/index.htm

display a seal which presumably provides some benefits in a competitive marketplace. The key difference would be the extent to which privacy issues act as a differentiator in the marketplace in the same way that environmental credentials might currently do, and that the Ecolabel is awarded to outstanding products within particular product categories. Additionally, most Ecolabel products will be purchased whereas many online services may not be. An important element of the scheme is the certification requirement that Ecolabelled products have reduced ecological impact compared to other similar products in the marketplace. If this requirement is maintained over time, with the standard of ecological impact continuing to improve, this could have beneficial impacts across entire industrial sectors. The Ecolabel, therefore, acts as a policy instrument with a specific direction, rather than simply producing a better-informed version of the status quo. This tendency would be desirable in an EU privacy seal that was intended to improve privacy and data protection practices over time.

5.3.2 Integrated pollution prevention and control (IPPC) certification

5.3.2.1 Overview

Integrated pollution prevention and control (IPPC) certification is based on the Integrated Pollution Prevention and Control Directive⁷⁵ which requires industrial and agricultural activities with a high pollution potential to have a permit which is issued only if certain environmental conditions are met, so that the companies themselves bear responsibility for preventing and reducing any pollution they may cause.

5.3.2.2 Description

Adopted in 1996 and applied since October 1999, the IPPC system, has been regularly amended and addressed by European legislation although the core function of the scheme has remained quite constant. Changes have often reflected a need for legal clarification or for compatibility with other legislation. The original IPPC Directive (96/91/EC)⁷⁶ has been amended four times; to reinforce public participation, to clarify the relationship between the IPPC system and the EU greenhouse gas trading scheme, and in relation to comitology procedures and the European Pollutant Emission Register.⁷⁷ The IPPC system was further codified in Directive 2008/1/EC concerning integrated pollution prevention and control.⁷⁸ The IPPC Directive will be repealed with effect from 7 January 2014 by the new legal framework of Directive 2010/75/EU on industrial emissions (IED).⁷⁹ This combines the IPPC Directive with six other pieces of environmental legislation, and in the view of the Commission, the revised Directive addresses shortcomings of the IPPC. The component Directives are substantively unchanged, with the key motives being collation with some tightening or

⁷⁵ European Parliament and the Council, Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control, *OJ L* 24, 29 Jan 2008.

⁷⁶ Council of the European Union, Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, *OJ L* 257, 10 Oct 1996, pp. 0026 -0040.

⁷⁷ European Commission DG Environment, The IPPC Directive, 30 Nov 2012.
<http://ec.europa.eu/environment/air/pollutants/stationary/ippc/legis.htm>

⁷⁸ European Parliament and the Council, Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control (Codified version), *OJ L* 24, 29 Jan 2008. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0001:EN:NOT>

⁷⁹ European Commission DG Environment, The Industrial Emissions Directive: Summary of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control), 30 Nov 2012. <http://ec.europa.eu/environment/air/pollutants/stationary/ied/legislation.htm>

clarification of requirements. Directive 2010/75/EU was adopted on 24 November 2010, entered into force on 6 January 2011 and was to be transposed into national legislation by Member States by 7 January 2013.⁸⁰ The following details refer primarily to the instance of IPPC as operating under Directive 2008/1/EC.

Integrated pollution prevention and control concerns new or existing industrial and agricultural activities with a high pollution potential. These are defined in Annex I to the Directive as energy industries, production and processing of metals, mineral industry, chemical industry, waste management, livestock farming, etc.⁸¹ There are about 50,000 of these installations in Europe.

The essence of IPPC is that industrial and agricultural operators should use the best options available to achieve a reduction in pollution and a high level of protection of the environment taken as a whole. IPPC achieves this by requiring the operators to acquire permits based upon the use of the best available techniques (known as BAT), together with a consideration of the local environmental conditions, the technical characteristics of the specific installation and its location. These permits are specific to each industrial installation and include emission limit values (ELVs) for emission to land, water and air, as well as other conditions.⁸²

In order to receive an IPPC permit, an industrial or agricultural installation must comply with certain basic obligations. In particular, it must:

- Use all appropriate pollution-prevention measures, namely the best available techniques (which produce the least waste, use less hazardous substances, enable the substances generated to be recovered and recycled, etc.);
- Prevent all large-scale pollution;
- Prevent, recycle or dispose of waste in the least polluting way possible and in accordance with the Waste Framework Directive (2006/12/EC);
- Where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment
- Use energy efficiently;
- Ensure accident prevention and damage limitation;
- Take necessary measures upon definitive cessation of activities to avoid any pollution risk and return the sites of operation to their original state when the activity is over.

5.3.2.3 Responsibility

The European Commission Directorate General Environment is responsible for overseeing the scheme at a European level. It is assisted by the European IPPC Bureau (EIPPCB).⁸³ EIPPCB organises and co-ordinates the exchange of information leading to drawing up best available technique reference documents for different industries. Known as BREFs, these are the main reference documents used by competent authorities in Member States when issuing operating

⁸⁰ European Commission DG Environment, “The IPPC Directive: Revision of the IPPC Directive”, 30 Nov 2012. http://ec.europa.eu/environment/air/pollutants/stationary/ippc/ippc_revision.htm

⁸¹ See http://europa.eu/legislation_summaries/environment/waste_management/128045_en.htm

⁸² Department for Environment, Food and Rural Affairs, Environmental Permitting Guidance: The IPPC Directive Part A (1) Installations and Part A(1) Mobile Plant, For the Environmental Permitting (England and Wales) Regulations 2010, Updated March 2010, Version 3.0, Department for Environment, Food and Rural Affairs, London, 2010.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69319/pb13634-ep2010ippc.pdf

⁸³ European IPPC Bureau. <http://eippcb.jrc.ec.europa.eu/>

permits for the installations that represent a significant pollution potential in Europe.⁸⁴ Certificates are issued by competent authorities or regulators in Member States (for example, by the Environment Agency in the UK).⁸⁵

Certificates are issued by competent authorities or regulators in Member States. Examples include the Environment Agency in the United Kingdom. The European IPPC Bureau (EIPPCB) does not control the scheme at the EU level, however, it organises and co-ordinates the exchange of information that leads to the drawing up and review of BAT Reference documents (or BREFs). The European Commission, Directorate General Environment has general oversight of the scheme at EU level.

One issue of relevance given the organisation of the IPPC scheme is that, unlike many other certification schemes, and many privacy seals, the IPPC is not significantly addressed to the public. Permits are decided between potentially polluting sites and the competent authorities, and the scheme is not dependent upon the public for its legitimacy and effectiveness. The scheme does not feature a visible public logo. Members of the public should be able to access information on proposed applications as well as contact details for the relevant agencies, and should have the possibility of taking part in the licensing process.

5.3.2.4 Sustainability

The scheme has existed since 1999, which suggests that it is a sustainable model. Because the scheme is underpinned by legislation that makes acquisition of an IPPC certification mandatory for particular types of industry, participation in the scheme is non-voluntary, and the scheme could be expected to persist whilst there are still polluting industries. Permits are issued by competent authorities, who in many cases are a part of central or regional government. The quality of the permit may therefore be dependent upon the resources and sustainability of these organisations. The EIPPCB is part of the European Commission's Joint Research Centre, and the production of BREF guidance in support of the IPPC scheme is dependent upon the sustainability of this organisation.

5.3.2.5 Criticisms and concerns

The relevant Directives (2008/1/EC) and 2010/75/EU) are transposed into national legislation by Member State governments. In addition, the competent authorities in Member States determine the award of permits, emission limit values, and applicable fees. They are also responsible for enforcement action. This introduces a relatively high level of variation across Member States, which has been criticised.⁸⁶

The IPPC scheme is not primarily public-facing, although the public are able to make objections to applications for permits. The 2008 Directive grants the public a right to participate in the decision-making process, and to be informed of its consequences. The permit applications, the permits, the results of the monitoring of releases and the European Pollutant Release and Transfer Register (E-PRTR)⁸⁷ are to be made publicly available. In E-

⁸⁴ European IPPC Bureau. <http://eippcb.jrc.ec.europa.eu/>

⁸⁵ Environment Agency. <http://www.environment-agency.gov.uk/>

⁸⁶ Kaya, Eda, *The Implementation of the IPPC Directive to SMEs in Textile Industry in Turkey*, Lund University, November 2005. http://www.lumes.lu.se/database/alumni/04.05/theses/eda_kaya.pdf

⁸⁷ European Environment Agency, The European Pollutant Release and Transfer Register (E-PRTR). <http://prtr.ec.europa.eu/>

PRTR, emission data reported by Member States are made accessible in a public register, which is intended to provide environmental information on major industrial activities. E-PRTR replaces the previous EU-wide pollutant inventory, the European Pollutant Emission Register (EPER). However, the scheme likely has low public awareness and is not comparable in this respect to many seal schemes where the logo and public awareness play an important part in the scheme's impact. Information on the scheme is aimed primarily at industry and agriculture, and not at the public in general. Given the complex nature of industrial supply chains, rarely will the public be in a position to make a decision between different industrial products or services on the basis of their IPPC certificate.

Studies conducted by the Commission on the implementation of the IPPC Directive dealing with the reporting period 2006-2008 raised issues about the quality of the permits issued by authorities under the IPPC scheme. Sixty-one IPPC installations across 12 sectors and 16 Member States were examined in detailed case studies. The Commission found that a large proportion did not feature best available techniques as set out in BREF documents. It found no justification for the significant differences between the BREFs and permit conditions set for more than 50 per cent of the installations examined.⁸⁸ The reports of the Member States on the implementation of the Directive during this period also revealed to the Commission a need for some countries to finalise the issuing of permits in order to ensure compliance with the Directive. The report also identified the need for a more coherent inspection mechanism, and the need to reduce the administrative burden created by the IPPC scheme.⁸⁹

Legal experts working for the World Wildlife Fund suggested that confusing wording in the revised IPPC Directive could contradict carbon dioxide (CO₂) reduction measures and the European Emission Trading Scheme Directive.⁹⁰

5.3.2.6 Success factors and best practices

The Commission has stated that it believes that “IPPC and the body of legislation on industrial emissions play a significant role in the protection and improvement of the European environment and the health of its citizens.”⁹¹

The IPPC scheme is mandatory for industrial and agricultural polluters above a certain threshold. Acquiring IPPC certification from the relevant competent authority is therefore a pre-requisite of conducting business in a particular way. This results in the number of certified entities being much closer to the potential population than in a purely voluntary scheme. At the same time, the IPPC Directive contains elements of flexibility by allowing the licensing authorities, in determining permit conditions, to take into account the technical

⁸⁸ European Commission, Report from the Commission to the Council and the European Parliament on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, COM/2010/0593 final, 25 Oct 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0593:EN:NOT>

⁸⁹ European Commission DG Environment, “The IPPC Directive, Key implementation measures”, 3 July 2013. http://ec.europa.eu/environment/air/pollutants/stationary/ippc/key_impl.htm

⁹⁰ Eckstein, Anne, “Legal compatibility of ETS and IPPC Directives under challenge”, *Europolitics*, 07 April 2010. <http://www.europolitics.info/legal-compatibility-of-ets-and-ippc-directives-under-challenge-art268206-15.html>

⁹¹ European Commission, Summary of the Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on the industrial emissions (integrated pollution prevention and control) (recast), SEC(2007)/1682 Final, Brussels, 21 Dec 2007. <http://www.ipex.eu/IPEXL-WEB/dossier/dossier.do?code=COD&year=2007&number=0286&appLng=EN>

characteristics of the installation, its geographical location and the local environmental conditions.

One of the key success factors of the IPPC scheme that may have important relevance for privacy seals is the concept of best available techniques (BAT). These are regularly updated in light of technological and industrial development. BAT should be taken into account by competent authorities when granting certificates, but are also available as a resource to industry. The ongoing development and revision of BAT keeps the scheme updated and relevant. In effect, it introduces continually developing improvements in the pollution standard, which are supposedly achievable by industry without excessive costs. The more environmental damage BAT can prevent, the more the regulator can justify telling the operator to spend on it before the costs are considered excessive. Given that technologies and best practice develop at different rates in different sectors, having different BREFs for different sectors allows flexibility.⁹² According to the UK DEFRA, this also provides a role for industry in determining acceptable best practice:

The concept of BAT is founded upon the need for the techniques to be demonstrably both technically and economically viable in the industry sector concerned. The Directive continues and enhances the information exchange process amongst Member States through which conclusions on (BAT) are reached and adopted by the European Commission. The information exchanged can only come from operational experience and so, by contributing fully to that process as we encourage them to do, operators have full opportunity to influence BAT conclusions and so the standards which their installations have to meet.⁹³

5.3.2.7 Conclusion

Whilst the IPPC certification is not public-facing in the way that many seal schemes are, it presents an interesting model for privacy seals. The IPPC certificate acts as a requirement of doing business. As such, it acknowledges that pollution-related harms do not primarily fall upon individuals but rather upon society as a whole. The IPPC model of best available techniques combines industry acceptance with constantly advancing standards of best practice techniques for the application of potentially harmful technologies. The system also takes into account the impact of the operation of an installation. Inspections of the facilities during their lifetimes are facilitated by reference to the BATs. However, it does demonstrate the variability that can be caused when a certification scheme is administered by a variety of competent authorities in different Member States.

5.3.3 Green Dot

This section discusses the Green Dot scheme.

⁹² DEFRA, *Environmental Permitting Guidance: The IPPC Directive Part A (1) Installations and Part A (1) Mobile Plant: for the Environmental Permitting (England and Wales) Regulations 2010, Version 3.0.*, DEFRA, London, 05 March 2010.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69319/pb13634-ep2010ippc.pdf

⁹³ DEFRA, *Explanatory memorandum to the Environmental permitting (England and Wales) (Amendment) Regulations, DRAFT*, London, 2013.

http://www.legislation.gov.uk/ukdsi/2013/9780111532126/pdfs/ukdsiem_9780111532126_en.pdf

⁹³ European Parliament and Council, Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, *OJ L* 365, 31 Dec 1994, pp. 10-23.

⁹³ PRO Europe. <http://www.pro-e.org/>

⁹³ Emergo Europe, "About Green Dot and Europe's packaging waste recovery efforts", The Hague.

5.3.3.1 Overview

The Green dot program is based on the Packaging and Packaging Waste Directive 94/62/EC⁹⁴ (which harmonised national laws concerning the management of household packaging waste and the enhancement of environmental protection). The program is managed by PRO EUROPE (Packaging Recovery Organisation Europe s.p.r.l.).⁹⁵ More than 130,000 participating companies and 460 billion packages carry the Green Dot[®] logo.⁹⁶



Figure 5: The Green Dot logo

5.3.3.2 Description

The Green Dot (known as Der Grüne Punkt in Germany) is a licensed trademark, which can be used by subscribers to indicate their participation in a European-wide system of packaging material recycling. The scheme is based upon the European Packaging and Packaging Waste Directive (94/62/EC) which came into force on 31 December 1994. Countries had to implement this in national legislation by 2001. The Directive introduced the concept of Producer Responsibility: companies producing consumer goods in packaging must recover their own waste packaging. This is generally impossible except for small volume and specialist producers, producing a requirement for schemes that allowed the companies to appropriately contribute to the costs of their own recovery.

The presence of the Green Dot on packaging means that in relation to that particular type of packaging, a financial contribution has been paid to a qualified national recovery organisation, set up in accordance with the principles defined in EU Directive 94/62/EC and respective national laws.⁹⁷ The specific fees to be paid by the contributing company are based upon samples of packaging and statements about the quantity shipped to each country as well as upon a range of local factors, including:

- Existing collection and recovery infrastructure in the waste management sector
- The source of packaging used to meet national recycling quotas (household or industry)
- The proportionate share of costs that industry bears. Some schemes meet 100% of the cost of collection and recovery, whilst others pay a share.
- National recycling quotas and the effect of derogations
- Collection systems used (bring to recycling or kerbside collection)
- Geographic location and population density
- Enforcement regimes

⁹⁴ European Parliament and Council, Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, *OJ L* 365, 31 Dec 1994, pp. 10–23.

⁹⁵ PRO Europe. <http://www.pro-e.org/>

⁹⁶ Emergo Europe, “About Green Dot and Europe’s packaging waste recovery efforts”, The Hague.

⁹⁷ PRO Europe, Overview. <http://www.pro-e.org/About.html>

- Labour costs and general overheads.⁹⁸

The Green Dot scheme originated in Germany in 1990-91 in response to a waste packaging ordinance that made producers of packaging responsible for the recovery of waste packaging (this would serve as the inspiration for 94/62/EC). Producers who did not want to take on the burden of recovering this packaging themselves could voluntarily opt into a recovery scheme (known as the Duales system), the costs of which were dependent upon the type and volume of waste produced. In the original German scheme, the packaging produced by these companies could be marked with the Green Dot, and would be placed into a separate waste container by consumers for a dedicated waste collection.

Industry in 28 countries now uses the Green Dot as a financing symbol for the organisation of recovery, sorting and recycling of sales packaging. This includes 23 EU member states (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden), Norway, Turkey, Serbia, Israel and Macedonia. PRO EUROPE has co-operation agreements with similar systems in UK (VALPAK) and Canada (StewardEdge).⁹⁹

The objectives of the scheme are to reduce the environmental impact of waste and encourage efficient use of resources through reuse, recycling and other forms of recovery. At the same time, the operation of the scheme at a European level is also a harmonisation measure intended to facilitate the free and easy flow of trade goods throughout the EU. The presence of the Green Dot on packaging is also intended to raise awareness of environmental and waste issues. The beneficiaries of the scheme include the environment, and local authorities who previously carried the financial burden of recovery and disposal of waste packaging.

5.3.3.3 Responsibility

The worldwide umbrella organisation for management of the Green Dot is PRO EUROPE (Packaging Recovery Organisation Europe). PRO EUROPE is based in Brussels and was founded in 1995. It is a private limited liability company. PRO EUROPE assists member companies with registering in other countries. PRO EUROPE appoints a company in each of these countries to manage the Green Dot trademark. The organisation is intended to prevent the need to attach different national symbols to packaging but rather to provide a mechanism to allow the same symbol to have validity in different countries.¹⁰⁰ PRO EUROPE was formed by Duales System Deutschland GmbH (Germany), Eco-Emballages S.A. (France), FOST Plus (Belgium) and ARA Altstoff Recycling Austria AG. As a licensed trademark, the scheme uses international trademark law as an enforcement mechanism.¹⁰¹ The German private company Duales System Deutschland GmbH (DSD)¹⁰² holds the rights to the mark, which is registered and defended, in approximately 170 countries worldwide.¹⁰³ DSD has then

⁹⁸ PRO Europe, "Participation Costs Overview 2013", Brussels, January 2013.
<http://pro-e.org/files/Participation%20Costs%202013-edit.pdf>

⁹⁹ PRO Europe, "Overview". <http://www.pro-e.org/About.html>

¹⁰⁰ PRO Europe, "Legal basis". <http://pro-e.org/Legal-basis.html>

¹⁰¹ Emergo Group, "Green Dot & packaging waste directive compliance in Europe", February 2007.
<http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

¹⁰² Duales System Deutschland GmbH. <http://www.dsd-holding.de/en/>

¹⁰³ PRO Europe, "Trademark Issues". <http://pro-e.org/Trademark-Issues.html>

granted the rights to license and use the mark in Europe (excluding Germany) to PRO EUROPE.¹⁰⁴

The Green Dot scheme is located primarily in the private sector, run by private companies and governed through trademark licensing law. The main applicable accountability mechanisms would therefore be through the market or through legal action in the case of a breach of contract. Whilst Directive 94/62/EC is the basis for the scheme's functioning, it is not a legal accountability mechanism for the scheme and did not set up the scheme.

5.3.3.4 Sustainability

The Green Dot scheme appears to have good sustainability. It has been running for over two decades and appears to be self-sustaining. There has been criticism in Germany from local authorities that would like to run alternative schemes, which suggest that the privately-run scheme might be too profitable. It is not clear that the scheme would remain sustainable in the absence of the Packaging Waste Directive. Duales System Deutschland states that it sees sustainability as a key part of its company philosophy; however, this language is primarily in relation to environmental sustainability.¹⁰⁵ Theoretically, if packaging waste was drastically reduced at source, then the income from the scheme might be significantly reduced below the cost of operation. If the Green Dot scheme was incredibly successful, it might put itself out of existence.

5.3.3.5 Criticisms and concerns

There is quite a high level of variation in practices between member countries. Enforcement mechanisms, scheme requirements, joining and ongoing fees all vary between countries. Different Member States have different waste packaging laws (in addition to those required by the Directive) and the Green Dot does not signify compliance with all of these laws. The UK is an exception to most European countries in that the UK does not operate a Green Dot scheme along the lines of its European counterparts. The use of the trademark is licensed in the UK for those organisations wishing to display the emblem but the use of the mark is not obligatory in the UK.¹⁰⁶ Some companies have raised the issue of variability in invoicing practices across countries, for example, one country might produce an invoice based upon waste collected while another might ask for payment on the basis of the packing volume report submitted to the national scheme. If the accounting departments of larger companies require an invoice before payment, this latter practice can be problematic.¹⁰⁷

The Green Dot logo can be confused with the recyclable logo (a triangle composed of three arrows). The Green Dot does not mean that the packaging is fully recyclable (only that its manufacturers are contributing towards the cost of its recovery).

Given the large volume of licenses issued, and the wide range of packaging produced (a single company might easily have hundreds of different packages for its products), the Green

¹⁰⁴ PRO Europe, "Supplementary Royalty Free Licensing Agreement for the use of the Der Grüne Punkt (the Green Dot)". http://pro-e.org/files/13_04%2017_Supple__agreement.pdf

¹⁰⁵ Duales System Deutschland GmbH, "Sustainability", *Der Grüne Punkt*. <http://www.gruener-punkt.de/en/corporate/sustainability.html>

¹⁰⁶ PRO Europe, "Green Dot Licensing Company, United Kingdom". http://pro-e.org/united_kingdom1.htm

¹⁰⁷ Emergo Group, Green Dot & Packaging Waste Directive Compliance in Europe, February 2007. <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

Dot scheme is somewhat vulnerable to free-riding, where a company prints the Green Dot logo onto its packaging without an appropriate licence or imports products from a country where they are licensed to a country where they are not. In Malta, this has been regularly responded to through trademark violation lawsuits by Green Dot licensing authorities (Green Dot Malta).¹⁰⁸ European government authorities and Green Dot organisations are apparently increasing surveillance and regular checks of retail locations to ensure that products displaying the Green Dot trademark possess an appropriate Green Dot licence.¹⁰⁹

When Germany introduced the original green dot scheme, its popularity with consumers (who would apparently look for the Green Dot on packaging and purchase selectively) created a barrier to companies outside Germany who wished to export their products into the country. There have been criticisms in Germany of the private nature of the company running the Duales System, and its ability to generate private sector profit. These criticisms come primarily from local governments that also participate in waste collection and might otherwise be able to recover costs from industry. This may be a national concern as there is no economic link between DSD and the systems in other countries.¹¹⁰

5.3.3.6 Success factors and best practices

The Green Dot can be seen as highly successful. It is one of the most widely used trademarks in the world, with more than 170,000 companies licensed to use its trademark. More than 460 billion packaging items are labelled annually with the symbol.¹¹¹ DSD claims to have a 98 per cent awareness rating in Germany and claims the Green Dot to be one of the world's best known trademarks.¹¹² More than 200 million people dispose of their packaging via a Green Dot organisation collection system and more than 14.7 million tonnes of packaging were recovered and recycled in Europe in 2005 by these organisations.¹¹³

The European Commission claimed that 25 million tonnes of CO₂ equivalent and 10 million tonnes of oil equivalent had been saved due to packaging recycling and other forms of recovery up to 2002 (PRO EUROPE is currently engaged in a project to establish a harmonise the methodology for CO₂ equivalent savings across the EU¹¹⁴, which should produce more up to date figures in the coming year) alongside an absolute reduction in the amount of packaging waste going to landfill, and a decoupling of GDP and packaging consumption in

¹⁰⁸ See *Times of Malta*, "Waste recovery company wins court case over 'dot' in name", 30 June 2010. <http://www.timesofmalta.com/articles/view/20100620/local/waste-recovery-company-wins-court-case-over-dot-in-name.313688>; Malta Media, "Court upholds prohibitory injunction against Karta Convertors", 19 Sept. 2009. <http://www.timesofmalta.com/articles/view/20100620/local/waste-recovery-company-wins-court-case-over-dot-in-name.313688>

¹⁰⁹ Ibid.

¹¹⁰ Birkenstock, Günter, "German Green Dot recycling system under threat", *Deutsche Welle*, 15 July 2013. <http://www.dw.de/german-green-dot-recycling-system-under-threat/a-16939098>

¹¹¹ <http://www.pro-e.org/About.html>

¹¹² Duales System Deutschland GmbH, "A Strong Brand", *Der Gruener Punkt*. <http://www.gruener-punkt.de/en/duales-system-deutschland-gmbh/brand.html>

¹¹³ Emergo Group, Green Dot & Packaging Waste Directive Compliance in Europe, February 2007. <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

¹¹⁴ PRO Europe, "A Common tool for CO₂ equivalent emission savings calculation" *PRO Newsletter*, October 2012.

<http://www.envipak.sk/files/documents/pro-e-newsletter/pro%20europe%20autumn%202012%20newsletter%20final.pdf>

several countries.¹¹⁵ Previously, packaging consumption was strongly correlated with increases in GDP. The *Producer Responsibility* concept means that producers who reduce the weight and volume of their packaging and use more easily recyclable materials benefit directly in terms of reduced costs.

Success factors include the concept of mandatory producer responsibility, its enactment in legislation via a Directive, a recognisable brand which has been broadly licensed rather than retained solely in one country.

The incorporation of the Directive into national law makes a scheme such as the Green Dot effectively quasi-mandatory. In order to comply with the Directive, manufacturers have the option of joining a pan-European compliance scheme such as Green Dot or of establishing their own packaging recovery programme compliant with national targets. This would be effectively impossible for many companies, producing a strong incentive to participate in the scheme as a way of demonstrating their legal compliance. However, at the same time, the scheme retains some local flexibility, and can be arranged around national or local waste packaging laws whilst still maintaining a basic level of commitment. The ability to license the recognised Green Dot and display it acts as a reward for compliance with legislation. The principle of producer responsibility works to align the incentive structures of waste producers with environmental protection.

Additionally, there is a significant amount of information available to the public on the scheme (for example, on the websites of PRO EUROPE or DSD). Given that the scheme is public facing, and the argument for licensing in part relies on consumers being able to identify the trademark, this information is important.

5.3.3.7 Conclusion

The Green Dot is a highly recognised certification scheme that attempts to align producer incentives with environmental protection goals. It signifies a base level of compliance with the potential for individual variations across Member States and directs this towards consumers. It is an example of a certification scheme operating in a very wide environment with a large number of products certified. The assessment of packaging can occur relatively quickly, however, checking a product that displays the symbol to see if it has an appropriate licence to do so. The scheme is not directly addressed to any of the processes used to produce the packaging, but only on the eventual product, which can be assessed without the participation of the producing company, because it is available on the open market. This may limit some of the transferability between the Green Dot scheme and privacy seals. However, the cost is associated with the cost of recycling the product and the scheme has resulted in innovation through the lifecycle of packaging that is driven by this cost. A parallel scheme for privacy would need to find an analogue between product recycling costs and some data protection or privacy issues, which are often resistant to quantitative analysis.

¹¹⁵ Pro Europe, “Packaging and the EU Directive on Waste: Questions and Answers”, January 2009. http://www.apeak.org/uploads/Library/2009_q_and_a_packaging_and_eu_directive_on_waste.pdf

5.4 FINANCIAL AUDITING AND ACCOUNTING SECTOR

The need and importance of global accounting standards is now well established.¹¹⁶ Professor Ann Tarca¹¹⁷ summarises this perspective:

The use of one set of high quality standards by companies throughout the world has the potential to improve the comparability and transparency of financial information and reduce financial statement preparation costs. When the standards are applied rigorously and consistently, capital market participants will have higher quality information and can make better decisions. Thus markets allocate funds more efficiently and firms can achieve a lower cost of capital.¹¹⁸

5.4.1 International Financial Reporting Standards (IFRS)

This section discusses the International Financial Reporting Standards (IFRS).

5.4.1.1 Overview

The International Financial Reporting Standards (IFRS) are global accounting standards used in the preparation of public company financial statements.¹¹⁹

5.4.1.2 Description of scheme

The Board of the International Accounting Standards Committee (IASC) issued the International Accounting Standards (IAS) between 1973 and 2001. On 1 April 2001, the new International Accounting Standards Board (IASB) (part of the International Financial Reporting Standards (IFRS) Foundation¹²⁰) took over the responsibility for setting IAS from the IASC. This Board adopted existing IAS during its first meeting along with the Standing Interpretations Committee standards (SICs). The IASB has continued to develop standards calling the new standards the International Financial Reporting Standards (IFRS).

The IFRSs are targeted at financial companies (banks, insurance companies). Its beneficiaries include investors, analysts, regulators, business leaders, accounting standard-setters and the accountancy profession. According to a 2013 Deloitte Guide, over 8,000 EU listed companies use these standards, alongside an unmentioned number of non-EU companies.¹²¹

¹¹⁶ Drawing support from various international organisations, including the G20, World Bank, International Monetary Fund (IMF), Basel Committee, the International Organization of Securities Commissions (IOSCO) and the International Federation of Accountants (IFAC).

¹¹⁷ Ann Tarca is the Head of Discipline/Winthrop Professor of Accounting and Finance at the University of Western Australia. Her teaching interests include financial accounting and her research focuses on international accounting, the adoption of international accounting standards and the regulation of financial reporting, particularly the harmonisation and enforcement of reporting requirements at an international level. She has published widely internationally.

¹¹⁸ Tarca, Ann, "The Case for Global Accounting Standards: Arguments and Evidence", IFRS Foundation, June 2013.

<http://www.ifrs.org/Use-around-the-world/Documents/Case-for-Global-Accounting-Standards-Arguments-and-Evidence.pdf>

¹¹⁹ IFRS Foundation. <http://www.ifrs.org>

¹²⁰ An independent, not-for-profit private sector organisation headquartered in the UK.

¹²¹ Deloitte, *IFRS in your pocket 2013*, London, April 2013. <http://www.iasplus.com/en/tag-types/ifrs-in-your-pocket/ifrs-in-your-pocket>

The IASB (which has 15 full time members), develops and publishes the various IFRSs (such as IFRS for SMEs) and approves Interpretations of IFRSs as developed by the IFRS Interpretations Committee, formerly the IFRIC). The Board aims to follow a “thorough, open and transparent due process” and engage “closely with stakeholders around the world, including investors, analysts, regulators, business leaders, accounting standard-setters and the accountancy profession”, in the performance of its functions.¹²²

General purpose financial reporting aims to provide potential investors, lenders and other creditors of an entity with financial information that can help them make decisions in relation to that entity and their investments in it. It is particularly useful for “users who provide resources to a reporting entity, but lack the ability to compel the entity to provide them with the information they need to make decisions about their investments”.¹²³ In line with this, the IFRS Foundation and the IASB aim to:

- develop a single set of high quality, understandable, enforceable and globally accepted International Financial Reporting Standards (IFRSs)
- promote the use and rigorous application of those standards;
- take account of the financial reporting needs of emerging economies and small and medium-sized entities (SMEs), and
- promote and facilitate adoption of IFRSs, being the standards and interpretations issued by the IASB, through the convergence of national accounting standards and IFRSs.¹²⁴

In June 2002, the European Union adopted an IAS Regulation (Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards) requiring European companies listed in an EU securities market, including banks and insurance companies, to prepare their consolidated financial statements in accordance with IFRS starting with financial statements for financial year 2005 onwards. The European IAS regulation applies not only to the 28 EU Member States but also to the three members of the European Economic Area (EEA) - Iceland, Liechtenstein, and Norway.¹²⁵

Non-EU companies listed on the EU-regulated market must also file financial statements prepared either using IFRSs issued by the IASB or Generally Accepted Accounting Principles (GAAP) designated by the European Commission as equivalent to the IFRSs.¹²⁶ This was enabled by Commission Regulation (EC) No 1126/2008 of 3 November 2008 which adopted certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council.¹²⁷ Each IAS and IFRS as well as related

¹²² IFRS Foundation, “About the IFRS Foundation and the IASB”. <http://www.ifrs.org/The-organisation/Pages/IFRS-Foundation-and-the-IASB.aspx>

¹²³ IFRS Foundation, “Conceptual Framework: Objectives and Qualitative Characteristics”. <http://www.ifrs.org/Current-Projects/IASB-Projects/Conceptual-Framework/Objectives-and-qualitative-characteristics/Pages/Objectives-and-qualitative-characteristics.aspx>

¹²⁴ IFRS Foundation, “About the IFRS Foundation and the IASB”. <http://www.ifrs.org/The-organisation/Pages/IFRS-Foundation-and-the-IASB.aspx>

¹²⁵ European Commission, *Implementation of the IAS Regulation (1606/2002) in the EU and EEA*, 7 Feb 2012. http://ec.europa.eu/internal_market/accounting/docs/ias/ias-use-of-options_en.pdf

¹²⁶ European Commission, “Third countries - equivalence/convergence”, 30 September 2013. http://ec.europa.eu/internal_market/accounting/third_countries/index_en.htm

¹²⁷ European Commission, Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, *OJ L* 320/1, 29 Nov 2008. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:320:0001:048:en:PDF>

interpretations (SIC/IFRIC) are adopted by the EU in the form of regulations.¹²⁸ The requirements for implementation of IFRS at the Member State level are as prescribed by legislation.

IAS Regulation (Regulation (EC) No 1606/2002 prescribes the conditions of the scheme. It states

For each financial year starting on or after 1 January 2005, companies governed by the law of a Member State are to prepare their consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6 (2) if, at their balance sheet date, their securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field.¹²⁹

The IFRS process to be followed by the companies is prescribed in each individual applicable standard.¹³⁰ A 2007 report on the IFRS scheme prepared for the European Commission stated that publicly traded companies incurred typical costs ranging from 0.05 per cent to 0.31 per cent of turnover to prepare their first IFRS consolidated statements.¹³¹ The report also estimated that the typical recurring costs of preparing IFRS consolidated financial statements ranged from 0.008 per cent to 0.06 per cent of turnover.

The development of the IFRS standards themselves involves the following six stages:¹³²

1. Setting the agenda
2. Planning the project
3. Developing and publishing the discussion paper
4. Developing and publishing the exposure draft
5. Developing and publishing the standard
6. Post standard issue review

After an IFRS is issued, the IASB staff and members hold regular meetings with interested parties (such as other standards setting bodies) “to help understand unanticipated issues related to the practical implementation and potential impact of its proposals”.¹³³ The IFRS Foundation conducts various educational activities “to ensure consistency in the application of IFRSs”.¹³⁴

5.4.1.3 Responsibility

There are various bodies that assist in the implementation and operation of the IFRS Scheme. The Accounting Regulatory Committee (ARC) (set up pursuant to the requirements of Article

¹²⁸ For a list of Regulations adopting IAS and IFRS, see: European Commission, Regulations adopting IAS.

http://ec.europa.eu/internal_market/accounting/legal_framework/regulations_adopting_ias/original_text_en.htm

¹²⁹ European Parliament and the Council, Regulation 1606/2002/EC of 19 July 2002 on the application of international accounting standards, OJ L 243/1, 11 Sept 2002.

http://www.esma.europa.eu/system/files/Reg_1606_02.pdf

¹³⁰ See IFRS Foundation. <http://www.ifrs.org/IFRSs/Pages/IFRS.aspx>

¹³¹ The Institute of Chartered Accountants in England and Wales (ICAEW), “EU Implementation of IFRS and the Fair Value Directive”, A report for the European Commission, October 2007.

http://ec.europa.eu/internal_market/accounting/docs/studies/2007-eu_implementation_of_ifrs.pdf

¹³² IFRS Foundation, “How we develop IFRSs”. <http://www.ifrs.org/How-we-develop-standards/Pages/How-we-develop-standards.aspx>

¹³³ Ibid.

¹³⁴ IFRS Foundation, “How we develop IFRSs”. <http://www.ifrs.org/How-we-develop-standards/Pages/How-we-develop-standards.aspx>

6 of the IAS Regulation 1606/2002/EC) composed of representatives from Member States and chaired by the EC, provides the Commission with opinions on the latter's proposals to adopt (or endorse) an international accounting standard as envisaged under Article 3 of the IAS Regulation.¹³⁵ The Standards Advice Review Group (SARG), (established by the EC in July 2006) ensures "objectivity and proper balance of the European Financial Reporting Advisory Group's (EFRAG) opinions".¹³⁶ The Group comprises independent experts and high-level representatives from National Standard Setters with wide accounting experience. The Group is responsible for assessing whether EFRAG's endorsement advice on IFRS and IFRICs are well-balanced and objective.

The Roundtable for consistent application of IFRSs acts as "a simple and efficient forum for European accounting experts to identify, at an early stage, emerging and potentially problematic accounting issues in relation to consistent application".¹³⁷ The Roundtable is expected to "complete the existing European infrastructure contributing to a proper and consistent application of IFRS".¹³⁸

One of the key entities is the European Financial Reporting Advisory Group (EFRAG)¹³⁹ (a private sector body) established in 2001 with the encouragement of the Commission to provide input into the development of IFRS and technical expertise and advice on accounting matters. Its key objective is to infuse a European influence into the international debate on accounting matters and ensure that developed IFRS standards and their interpretations are "good for Europe and therefore are capable of being endorsed for use in Europe".¹⁴⁰ EFRAG participates in the IASB's consultation process and some of its work.

The main enforcement body for the IFRS scheme is the European Securities and Marketing Authority (ESMA) which together with national competent authorities aims to "reinforce the level of convergence of financial information supervision and enforcement activities reflecting the strong commitment to contribute to the consistent application of IFRS around the globe".¹⁴¹ ESMA works through the ESMA's European Enforcers Coordination Sessions (EECS), a forum of 37 European enforcers from the 28 Member States, Iceland and Norway.

The supervision of listed entities and enforcement of financial information is performed at national level as required by the Transparency Directive,¹⁴² according to which each Member State must designate a Competent Authority to enforce financial information requirements.¹⁴³ According to the Transparency Directive, other organisations can carry out enforcement activities, either in their own right or on behalf of the competent administrative authorities,

¹³⁵ European Commission, "Accounting Regulatory Committee" 25 Sept 2013.

http://ec.europa.eu/internal_market/accounting/committees/arc/index_en.htm

¹³⁶ European Commission, "Standards Advice Review Group", 25 Sept 2013.

http://ec.europa.eu/internal_market/accounting/committees/sarg/index_en.htm

¹³⁷ European Commission, "Roundtable for consistent application of IFRS", 25 Sept 2013.

http://ec.europa.eu/internal_market/accounting/committees/roundtable/index_en.htm

¹³⁸ Ibid.

¹³⁹ EFRAG. <http://www.efrag.org/Front/Home.aspx>

¹⁴⁰ EFRAG, "EFRAG Facts". <http://www.efrag.org/Front/c1-262/EFRAG-Facts.aspx>

¹⁴¹ ESMA. <http://www.esma.europa.eu>

¹⁴² European Parliament and the Council, Directive 2004/109/EC of the European Parliament and the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, *OJ L* 390/38, 31 Dec 2004, pp. 38-57.

¹⁴³ ESMA, *Activity Report of the IFRS Enforcement activities in Europe in 2012*, 22 July 2013.

http://www.esma.europa.eu/system/files/2013-022_activity_report_on_ifrs_enforcement_in_europe_in_2012.pdf

provided that these bodies are supervised by, and responsible to, the relevant competent administrative authority. However, only Germany and Sweden use this option.¹⁴⁴ An ESMA established internal database helps facilitate the sharing of enforcement decisions and experiences. As of 31 December 2012, around 250 emerging issues and more than 600 decisions were entered into the EECS database.

Enforcers select issuers to review based on a combination of a risk approach and either random sampling, or rotation, or both. Enforcers take a range of corrective and other actions, depending on national law for infringements of relevant reporting requirements detected as part of the review of the interim or annual financial statements. Where potential infringements of the reporting framework are identified, they are brought to the attention of the issuer. The enforcer may ask the issuer for additional information or explanations and then decide whether the treatment adopted by the issuer complies with the IFRS. If the infringement is considered material, the following actions are available depending on national law in the enforcer's jurisdiction:

- Issuance of revised financial statements accompanied by a new audit opinion (where applicable),
- Public corrective note or other type of communication to the public,
- Correction in the next financial statements.¹⁴⁵

Accountability is also evident in the scheme through the following: provision for meetings of the IASB to be held in public and webcast, publication of consultative documents such as discussion papers and exposure drafts for public comment, engagement with stakeholders such as investors, analysts, regulators, business leaders, accounting standard-setters and the accountancy profession.¹⁴⁶

5.4.1.4 Sustainability

The IFRS scheme has been in existence for over a decade (even longer if we take into account that IAS were issued from 1973). The European legal framework supports the existence of the scheme and mandates its use. The scheme is also supported by the industry. For example the Association Française des Entreprises Privées (AFEP) and the Mouvement des Entreprises de France (MEDEF) report states that “companies want to enhance the quality and strength of this framework in order to ensure its sustainability”.¹⁴⁷

The IFRS Foundation website suggests that the “responsibility for the funding arrangements of the IFRS Foundation rests with its Trustees” who approve its budget and determine the basis for its funding.¹⁴⁸ The annual budget for the Foundation is projected at around £25million.¹⁴⁹ The Foundation further clarifies how it is funded:

¹⁴⁴ Ibid.

¹⁴⁵ ESMA, *Activity Report*, 2013.

¹⁴⁶ IFRS Foundation, “About the IFRS Foundation and the IASB”.

<http://www.ifrs.org/The-organisation/Pages/IFRS-Foundation-and-the-IASB.aspx>

¹⁴⁷ Pébureau, Michel, et al, *Strengthening the Process for Adopting International Accounting Standards: A Strategic Challenge for the European Union*, AFEP & MEDEF, July 2013.

<http://www.medef.com/fileadmin/www.medef.fr/documents/AFEP-MEDEF/MEDEF-AFEP-Report-International-accounting-standards.pdf>

¹⁴⁸ IFRS Foundation, “Funding”.

<http://www.ifrs.org/The-organisation/Governance-and-accountability/Financing/Pages/Financing.aspx>

¹⁴⁹ Ibid.

The majority of the Foundation's funding is based on national financing regimes relative to a country's Gross Domestic Product (GDP). While funding mechanisms differ from country to country, most have established either a levy on companies, or an element of publicly supported financing. In addition, the organisation derives income from publications and related activities and from contributions from international accounting firms.¹⁵⁰

The Foundation specified four funding principles in 2006 to guide its funding regime. These principles are: broad based, compelling, open-ended and country or jurisdiction specific. In addition to this, the IFRS funding regime is said to have the following features:

- It provides a long-term commitment of the jurisdictions.
- It has public sponsorship (either direct or implicit governmental or regulatory support).
- It has to remain flexible.
- Contributions are allocated proportionally.
- It should provide public accountability in the budget process.¹⁵¹

The IFRS scheme seems to be one of the more open and transparent schemes in relation to making explicit and easily available details of its funding and sustainability, in comparison to the other analysed schemes.

5.4.1.5 Criticisms and concerns

While the IFRS are generally globally accepted, the American Institute of Certified Public Accountants (AICPA) suggests that some believe that the US Generally Accepted Accounting Principles (GAAP) is the gold standard, and that “a certain level of quality will be lost with full acceptance of IFRS”.¹⁵² Some US issuers without significant customers or operations outside the United States may resist IFRS as they may not have a market incentive to prepare IFRS financial statements, believing that the significant costs associated with adopting IFRS outweigh the benefits.

The AFEP & MEDEF report on *Strengthening the Process for Adopting International Accounting Standards: A Strategic Challenge for the European Union*¹⁵³ highlights various concerns and challenges of IFRS. These include:

- Effects of an inappropriate application of market value and other key concepts of the IFRS that have amplified some aspects of the financial crisis.
- The concern many companies have that “IFRS do not allow them, in some respects, to properly account for the economic reality of their activities and their performance and therefore cannot be used to manage their operations”.
- Due to the difficulties and the impact of accounting standards on economic competitiveness, many jurisdictions have chosen to maintain their sovereignty regarding the implementation of the IFRS (e.g., the United States and Japan).

¹⁵⁰ Ibid. Further details of the IFRS funding regime can be found in: IFRS Foundation, *IFRSs as the Global Standards: Setting a Strategy for the Foundation's Second Decade, Report of the IFRS Foundation Trustees' Strategy Review 2011*, IFRS Foundation, London, 2012. <http://www.ifrs.org/The-organisation/Governance-and-accountability/Strategy-Review/Documents/TrusteesStrategyReviewFeb2012.pdf>

¹⁵¹ Ibid.

¹⁵² AICPA, *International Financial Reporting Standards*, 2008. http://www.ifrs.com/updates/aicpa/ifrs_faq.html

¹⁵³ Pébureau, Michel, et al, *Strengthening the Process for Adopting International Accounting Standards: A Strategic Challenge for the European Union*, AFEP & MEDEF, July 2013. <http://www.medef.com/fileadmin/www.medef.fr/documents/AFEP-MEDEF/MEDEF-AFEP-Report-International-accounting-standards.pdf>

- The EU's accounting governance system set up for the IFRS is "too complex and insufficiently coherent to have a role within the IASB compatible with its size and its level of involvement with the IFRS, leading to Europe's position being expressed by many different voices, thus weakening its influence".¹⁵⁴

To deal with these challenges, the report called for "positive action in order to sustain the use and improve the quality of IFRS, to profoundly restructure the mechanism for adoption of the IFRS by the EU so as to align Europe's influence with its economic weight". The report focussed on three key pillars:

- Reforming the conceptual framework of the IFRS, so that the standards produced better meet the needs of the European economy (immediate action),
- Reforming the structure and governance of the European system for adopting accounting standards (immediate action, which can be undertaken within the scope of current texts), and
- Revising European regulations in order to give the EU the option of modifying a standard if it deems it necessary.

5.4.1.6 Success factors and best practices

The IFRS scheme has achieved a good level of success in harmonising the global accounting practices. The IFRS is seen as a

real step forward for companies and all stakeholders in terms of comparability, the existence of a language shared among the entities of the same company as well as between international groups and since it has increased transparency by the scope and reliability of the information required from companies.¹⁵⁵

One study that reviewed IFRS-related studies finds much support for the IFRS.¹⁵⁶ However, it concludes that "IFRS benefits are more likely to be realised when IFRS application is supported by a framework that encompasses legal protections, competent professionals and adequate monitoring and enforcement".¹⁵⁷

5.4.1.7 Conclusion

In Europe, the IFRS scheme is mandatory and therefore has had a strong impact upon the accounting industry. Since it is also a global standard, it has relevance not only within the EU but globally. The scheme also seems to be continuously evolving. However, there still remain a range of issues to be addressed, as pointed out in the ACEP/MEDEF report, particularly in relation to European needs.

¹⁵⁴ Ibid., p. 6.

¹⁵⁵ Pébureau, op. cit. 2013

¹⁵⁶ Daske, Holger, Luzi Hail, Christian. Leuz and Rodrigo S. Verdi, "Mandatory IFRS reporting around the world: Early evidence on the economic consequences", *Journal of Accounting Research*, Vol. 46, No. 5, 2008, pp. 1085-1142 (market liquidity increases around the time of the introduction of IFRS); Lee, Gladys, and Neil L. Fargher, "Did the adoption of IFRS encourage cross-border investment?" Working paper, Australian National University, 2010 (associating IFRS adoption with greater cross-border equity investment); Palea, Vera, "The effects of the IAS/IFRS adoption in the European Union on the financial industry", *The European Union Review*, Vol. 12, No. 1-2, 2007 (firms that implemented the IAS/IFRS gained a comparative advantage on the equity market).

¹⁵⁷ Tarca, Ann, "The Case for Global Accounting Standards: Arguments and Evidence", June 2013. <http://www.ifrs.org/Use-around-the-world/Documents/Case-for-Global-Accounting-Standards-Arguments-and-Evidence.pdf>

The IFRS scheme is seems to be a complex ecosystem of standards, supporting legislation and multi-level enforcement and not, per se, a certification model as such. Implementing a privacy certification scheme along the lines of this scheme would have to be cautiously approached as it seems the better model for certification targeted at larger organisations due to cost considerations.

5.5 ENTERTAINMENT

Certification schemes are also evident in the entertainment industry, notably for films and video games. There are various content certification systems: the Australian Classification Board (ACB),¹⁵⁸ British Board of Film Classification (BBFC),¹⁵⁹ Entertainment Software Rating Board (ESRB),¹⁶⁰ Motion Picture Association of America (MPAA),¹⁶¹ Newgrounds Ratings, Pan-European Game Information (PEGI),¹⁶² and the Association for UK Interactive Entertainment.¹⁶³ The content of movies and video games is rated, classified and certified according to prescribed audience and user suitability standards. Some of these certification systems are run by government agencies or funded organisations, and some by industry. Certification and/or rating schemes guide viewers or users about the suitability of products and services based on age and content suitability. Rating and certification systems in this area are well established and recognised. The entertainment sector is relevant to our Study because of its high societal impact factor.¹⁶⁴

5.5.1 Pan European Game Information (PEGI)

This section discusses the Pan European Game Information (PEGI) certification with a view to deriving lessons for EU-wide privacy certification.

5.5.1.1 Overview

Pan European Game Information (PEGI) a pan-European industry based voluntary certification standard, “provides parents and caregivers with detailed recommendations regarding the age suitability of game content in the form of age labels and content descriptors on game packages”.¹⁶⁵ PEGI was designed to replace existing national age rating systems with a single system that is identical throughout Europe. PEGI uses a combination of content declaration and game review to determine the appropriate PEGI rating for each game.

PEGI Online is an addition to the PEGI system.¹⁶⁶ Upon joining PEGI Online, companies must sign up to a code of conduct, indicating that they manage the online gaming features of their products in a responsible manner. In return, they receive a licence to use a registered PEGI Online label as a seal of quality, illustrated below:

¹⁵⁸ Australian Classification Board. <http://www.classification.gov.au/Pages/Home.aspx>

¹⁵⁹ British Board of Film Classification. <http://www.bbfc.co.uk/>

¹⁶⁰ ESRB. <http://www.esrb.org/>

¹⁶¹ Motion Picture Association of America. <http://www.mpa.org/>

¹⁶² PEGI. <http://www.pegi.info>.

¹⁶³ Association for UK Interactive Entertainment. <http://ukie.info/about>

¹⁶⁴ European Commission, “Communication on protection of consumers, in particular minors, in respect of the use of video games”, 2008. http://europa.eu/rapid/press-release_IP-08-618_en.htm?locale=FR

¹⁶⁵ PEGI, “FAQ”. <http://www.pegi.info/sg/index/id/26/>

¹⁶⁶ PEGI Online. <http://www.pegionline.eu/en/index/id/232>



Figure 6: The PEGI Online Label

PEGI also has rating labels; these are illustrated below:



Figure 7: PEGI rating labels

5.5.1.2 Description

PEGI has been operational since April 2003. PEGI Online was launched in 2007 and is in use in more than 30 countries. The PEGI system is created and owned by the Interactive Software Federation of Europe (ISFE) based in Belgium. PEGI S.A. (an independent entity) manages and develops the system. NICAM (Netherlands Institute for the Classification of Audiovisual Media/Kijkwijzer)¹⁶⁷ and the UK based Video Standards Council¹⁶⁸ administer the scheme on behalf of PEGI. According to the PEGI website, “The PEGI system was developed and based on existing rating systems in Europe and is supported by the majority of relevant Member State Government Agencies”.¹⁶⁹ It has replaced many national age rating systems with a single system throughout most of Europe (Austria, Denmark, Hungary, Latvia, Norway, Slovenia, Belgium, Estonia, Iceland, Lithuania, Poland, Spain, Bulgaria, Finland, Ireland, Luxembourg, Portugal, Sweden, Cyprus, France, Israel, Malta, Romania, Switzerland, Czech Republic, Greece, Italy, the Netherlands, Slovak Republic and the United Kingdom). PEGI’s users include Sony, Microsoft, Nintendo and many other publishers and developers of interactive games in Europe.

PEGI targets all game software, irrespective of format or platform that is “sold or distributed in Europe by any company subscribing to the standards”.¹⁷⁰ The beneficiaries of the scheme are game producers (application developers), digital platform operators, publishers, consumers (parents, caregivers, children), and the public. PEGI rated more than 20,000 games by the end of 2012.¹⁷¹

A PEGI OK label on a website or games portal indicates that “the strict PEGI rating criteria have been applied and it has been ascertained that there is nothing in the game that would lead

¹⁶⁷ Kijkwijzer. <http://www.kijkwijzer.nl/index.php?id=31>

¹⁶⁸ Video Standards Council. <http://www.videostandards.org.uk/VSC/>

¹⁶⁹ PEGI. “FAQ”. <http://www.pegi.info/en/index/id/26>

¹⁷⁰ PEGI, *Annual Report 2012*, Brussels, 2012, p.6. <http://www.pegi.info/en/index/id/media/pdf/390.pdf>

¹⁷¹ Ibid.

to a higher rating than the standard 3+ category”.¹⁷² To qualify for the label games must not contain any of the following elements: violence, sexual activity or sexual innuendo, nudity, bad language, gambling, promotion or use of drugs, promotion of alcohol or tobacco, and scary scenes. If the games have any of these elements, it is age-rated using the standard PEGI rating system (3, 7, 12, 16 or 18) that consists of an age rating label and a content descriptor. PEGI specifies requirements for game content.¹⁷³

Certification is awarded on fulfilment of the terms of the PEGI Code.¹⁷⁴ The obligations of signatories are set out in Article 5 of the PEGI Code. Further Article 6 specifies, “signatories shall ensure that the content, distribution by any means, promotion and advertising of the Products covered by this Code comply at all times with existing and future laws and regulations at EU and national level”.¹⁷⁵

The main features of the PEGI System are described in the PEGI Code¹⁷⁶ and their implementation is subject to guidelines enacted by the PEGI Enforcement Committee (PEC) and to specific agreements entered into by the Signatories and PEGI.

- Prior to product release, Signatories shall, for each product and format thereof complete an Assessment File.
- The Assessment File shall generate an age rating Logo and the Descriptors indicating the reasons for classification of the Product in a specific age category.
- The PEGI System age rating groups shall be divided as follows: 3, 7, 12, 16, and 18.
- The Administrator shall review the Assessment File according to the following prescribed rules.

In due course, the signatory receives a license to reproduce the logo and descriptors corresponding to the final recommendation on the product packaging, or where distribution is made via electronic means, an equivalent place immediately visible to consumers. Certification costs are reportedly around €250-€3000, depending on the type of title and distribution.

5.5.1.3 Responsibility

Though PEGI S.A. controls the scheme at the EU level, countries individually enforce the PEGI standards (i.e., PEGI Code of Conduct¹⁷⁷). The PEGI Code of Conduct is a set of rules which publishers of interactive software contractually commit to respect when using the PEGI system. The Code deals with age labelling, promotion and advertising of interactive products.

Possible wrongful application and/or breaches of the PEGI Code may result in any of the following corrective actions: re-labeling of packaging, revocation and removal of the logos and descriptors, recall of inaccurately labeled product, modification of advertisements both online and offline.

¹⁷² PEGI, “About PEGI”. <http://www.pegi.info/en/index/id/1382/>

¹⁷³ ISFE, PEGI Online Safety Code, 2007. <http://www.pegionline.eu/en/index/id/235>

¹⁷⁴ PEGI, Code of Conduct for the European Interactive Software Industry. <http://www.pegi.info/en/index/id/1185/media/pdf/372.pdf>

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ PEGI, Code of Conduct for the European Interactive Software Industry. <http://www.pegi.info/en/index/id/1185/media/pdf/372.pdf>

Failure to abide by the terms of the PEGI Code, including the failure to institute the corrective action may lead to the imposition of the following sanctions by the PEGI Enforcement Committee: temporary suspension of product from the PEGI and/or PEGI Online Systems, mandatory modification of any associated advertisements both online and offline, disqualification of product from the PEGI and/or PEGI Online Systems for a set period, and fines of up to €500,000 per violation depending on the gravity thereof and the failure to take appropriate remedial action.

The Complaints Board of PEGI comprises a pool of independent experts from different European countries on the protection of minors. Should a complaint be received from a consumer or publisher regarding a rating given to a game and no satisfactory settlement can be reached by the PEGI administrator through discussion, explanation or negotiation, the complainant may formally request the Complaints Board to mediate. Three board members convene, hear the complaint and decide on a ruling. Publishers using the PEGI system are bound by the decision of the Complaints Board. Consequently, they are obliged to carry out any required corrective actions and, in cases of non-compliance, are subject to sanctions outlined in the Code.

5.5.1.4 Sustainability

The success of PEGI is evident in the fact that it has “replaced a number of national age rating systems with a single system now used throughout most of Europe, in 30 countries.”¹⁷⁸ PEGI is also stated to have the “enthusiastic support of the European Commission”.¹⁷⁹

However, in PEGI’s 2012 Annual report Managing Director Simon Little highlights a “steady drop” in the games rated by PEGI since 2009 (i.e., a 33 per cent decrease in the annual total compared to 2009). This is reported to have had a direct impact of PEGI S.A.’s income and affected its ability to support communication activities. Reasons for the drop are not clear (either attributed to end of a hardware cycle in gaming or to migration of games to digital delivery platforms for smartphone or tablet gaming). PEGI has responded to this by launching *PEGI for APPS*.¹⁸⁰ This shows that the scheme is able to adapt to changing circumstances.

5.5.1.5 Criticisms and concerns

The PEGI scheme has been called “strange, overly cautious, and often brazenly harsh ratings system” (in comparison to the British Board of Film Classification), “giving games an age rating that's undoubtedly a lot higher than many parents would deem reasonable”.¹⁸¹

Another criticism, levelled against it, is that it does not cater adequately to contextual sensitivities.¹⁸² Though supporting the PEGI scheme, the Byron review points out that the PEGI criteria have a “limited ability to take into account the context in which certain content appears. This is partly to account for the fact that the nature of game playing means that a particular section may be played repeatedly, and may be seen out of context, in order to

¹⁷⁸ PEGI S.A., “About PEGI”. <http://www.pegi.info/en/index/id/28/>

¹⁷⁹ Interactive Software Federation of Europe, “About ISFE”. <http://www.isfe.eu/about-isfe>

¹⁸⁰ PEGI S.A. <http://apps.pegi.eu/>

¹⁸¹ Everybody Plays, “The problems with PEGI”, 30 July 2012.

<http://www.everybodyplays.co.uk/feature/360/The-problems-with-PEGI/1064/p2>

¹⁸² Whitehead, Dan “Is PEGI too tough?” *EuroGamer.net*, 14 April 2011.

<http://www.eurogamer.net/articles/2011-04-14-is-pegι-too-tough-article>

progress a level. In addition to this, it is more difficult to judge the context of a game when trying to account for so many countries' sensitivities".¹⁸³

One thesis questions "whether it is desirable that moral values are such an important factor in the classification process", as is evident in the case of the PEGI system.¹⁸⁴

A study that tested the PEGI system warns of its forbidden-fruit effect. It suggests, although the Pan European Game Information system was developed to protect youth from objectionable content, this system actually makes such games forbidden fruits. Paediatricians should be aware of this forbidden-fruit effect, because video games with objectionable content can have harmful effects on children and adolescents.¹⁸⁵

Privacy seals are unlikely to suffer from this exact problem. However, one similar effect is that some studies have already suggested that the presence of a privacy seal on a website might lead a website user to disclose more personal information¹⁸⁶; would a European privacy seal on a website (particularly if it signified stronger privacy protection) make it more appealing for a website user to disclose personal information more unreservedly or not take adequate steps to personally protect their privacy? This is hardly desirable and would need to be taken into account in the design and implementation of such a system.

The PEGI ratings are not strictly legally enforceable and some highlight how this factor might lead them to be ignored.¹⁸⁷

5.5.1.6 Success factors and best practices

The PEGI scheme is the dominant model of game certification in Europe and is widely recognised - therein lie its strengths.¹⁸⁸ The results of a 2012 videogames consumer study support this (one of the findings was that "more than 1 in 2 people recognise the PEGI age labels and that almost everyone finds them clear and useful".¹⁸⁹ Despite the voluntary nature of PEGI, games console manufacturers require games to be PEGI or BBFC rated. Console manufacturers are influential gatekeepers for videogame producers, able to set requirements for developers to produce content for their systems.

¹⁸³ Byron, Dr Tanya, *Safer Children in a Digital World: The Report of the Byron Review*, Department of Culture, Media and Sport, Nottingham, March 2008.

<http://media.education.gov.uk/assets/files/pdf/s/safer%20children%20in%20a%20digital%20world%20the%20008%20byron%20review.pdf>

¹⁸⁴ van Duuren, David, "Different PEGI age labels and their effect on aggressive affect, aggressive cognition and arousal", 2010. http://essay.utwente.nl/60450/1/MA_thesis_D_Duuren.pdf

¹⁸⁵ Bijvank, Marjie Nije, Elly A. Konijn, Brad J. Bushman and Peter H. Roelofsma, "Age and violent-content labels make video games forbidden fruits for youth", *Pediatrics*, Vol. 123, Iss. 3, 2009, pp. 870-876.

¹⁸⁶ LaRose, Robert, and Nora J. Rifon, "Promoting i-Safety: Effects of Privacy Warnings and Privacy Seals on Risk Assessment and Online Privacy Behavior", *Journal of Consumer Affairs*, Vol. 41, Summer, 2007, pp. 127-149; Miyazaki, Anthony D., Sandeep Krishnamurthy and Debbie Roth, "Internet Seals of Approval: Effects on Online Privacy Policies and Consumer Perceptions", *Journal of Consumer Affairs*, Vol. 36, Summer 2002, pp. 28-49.

¹⁸⁷ Welton, Craig, "Parental video game attitudes: children's access to restricted video games", Dissertation, Dublin Business School, 2011.

http://esource.dbs.ie/xmlui/bitstream/handle/10788/286/ba_welton_c_2011.pdf?sequence=1

¹⁸⁸ Wauters, Ellen, Eva Lievens and Peggy Valcke, *The use of labels to empower minors, parents and educators in the social media environment, An explanatory report*, EMSOC, Brussels, February 2013.

¹⁸⁹ Ipsos Media CT & Interactive Software Federation of Europe (ISFE), *Videogames in Europe: 2012 Consumer Study*, 2012. <http://www.isfe.eu/videogames-europe-2012-consumer-study>

Another report highlights the transparency (assured through publication of proceedings, website, and other efforts) and low administrative burden (supplemented by national statutory legislation) elements of PEGI.¹⁹⁰

In summary, the following factors contribute to PEGI's success:

- Scheme related innovation, e.g., introduction of PEGI Online and PEGI for APPS
- Communication and awareness building efforts
- Ability to rally large and small European retail games publishers
- Lack of competing schemes

These are four crucial elements that any EU certification scheme must be able to incorporate. The ability to innovate and be dynamic in the face of technological, economic or societal changes is key to the survival and continued success of any certification scheme. Certification schemes must be able to command a certain level of status and credibility to be able to draw funding¹⁹¹ to sustain and stimulate their growth if they are to make effective contributions to achieving their own and societal objectives. Communication with scheme stakeholders and awareness building efforts are also highly important; these help establish the reputation of the scheme operator and make the scheme more visible. Without the ability to rally subscribers and get subscribers to commit to the scheme requirements (in terms of embedding them in their own policies and practices) is also essential. Finally, what is also important is that the scheme is not competing with other similar schemes (or that other competing schemes are phased out).

5.5.1.7 Conclusion

With products in over 30 countries using it, and widespread recognition of the PEGI rating, PEGI seems to have reasonable success. In 2008, Viviane Reding, EU Commissioner for the Information Society and Media commended PEGI as “an example of responsible industry self-regulation and the only such system with almost pan-European coverage”.¹⁹² PEGI has a sort of segmented approach which enables it to be applied to games of differing natures and risks. This might have some lessons for EU privacy certification – the ability of a privacy certification to make a more nuanced distinction between different types of privacy and data protection risks that are posed by the target of certification.

However, as stated above, the system has a few concerns to address and requires commitment on the part of individual Member States and industry to make it a success.

¹⁹⁰ Marsden, Chris, Steven Simmons, Ian Brown, Lorna Woods, Adam Peake, Neil Robinson, Stijn Hoorens and Lisa Kalutzer, “Options for and Effectiveness of Internet Self- and Co-Regulation Phase 2: Case Study Report”, RAND Europe, Prepared for European Commission DG INFSO Steering Committee, 15 Jan 2008. http://ec.europa.eu/dgs/information_society/evaluation/data/pdf/studies/s2006_05/phase2.pdf

¹⁹¹ PEGI was co-funded by the EU's Safer Internet Programme (IP/08/310). See European Commission, Safer Internet Programme: Empowering and Protecting Children Online. http://ec.europa.eu/information_society/activities/sip/index_en.htm

¹⁹² European Commission, “Video Games: Commission welcomes progress on protection of minors in 23 EU Member States, but asks for improvement of industry codes”, Brussels, 22 April 2008. http://europa.eu/rapid/press-release_IP-08-618_en.htm?locale=FR

5.6 FOOD SECTOR

Increasing concerns about food quality and safety spawned the development of standards respectful of social, animal and environmental welfare.

When there was direct grower-to-consumer sales, food quality certification was not necessary. However, with the growth of huge, international and “anonymised” markets, food retailers and consumers needed a means of identifying and determining the standards of food produced and sold. Initially, certification was provided by “social movement organizations through personalistic and local associations – producer associations, food co-operatives, cafes and so on”.¹⁹³ Currently, food quality assurance standards are said to “derive from various sources” – intergovernmental, international organisations, food operator associations and international agreements.¹⁹⁴

In 2010, an inventory compiled for the European Commission listed 441 schemes for agricultural products and foodstuffs marketed in the EU, operating at different levels, i.e., business-to-business (B2B) or business-to-consumer (B2C).¹⁹⁵ Some of these schemes comply with compulsory production standards, and others with additional voluntary standards. Certification scheme owners include farmers and producers, NGOs, interest groups, retailers, and even public authorities. Examples of food quality certification schemes are: BRC Global Standard for Food Safety, Fairtrade, Freedom Foods, Global G.A.P, ISO 14001, ISO 22000, Organic Food Standard, Rainforest Alliance, Red Tractor Farm Assurance Scheme, Demeter and Bioland.

5.6.1 Protected Designation of Origin and Protected Geographical Indication

This section discusses the Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) schemes.

5.6.1.1 Overview

The Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) schemes “promote and protect names of quality agricultural products and foodstuffs”.¹⁹⁶ The schemes were previously regulated by Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural

¹⁹³ Scott, S., Peter Vandergeest and Mary Young, “Certification Standards and the Governance of Green Foods in Southeast Asia”, in Jennifer Clapp and Doris Fuchs (eds.), *Power and Private Interests in Global Food Governance*, MIT Press, Cambridge, MA, 2009, pp. 61-92, citing Campbell, Hugh, and Annie Stuart, “Disciplining the organic commodity”, in Vaughan Higgins and Geoffrey Lawrence (eds.), *Agricultural Governance: Globalization And The New Politics of Regulation*, Routledge, London, 2005; Mutersbaugh, Tad, “Just-in-space: Certified rural products, labor of quality, and regulatory spaces”, *Journal of Rural Studies*, Vol. 21, 2005, pp. 389-402; Raynolds, Laura, and John Wilkinson, “Fair Trade in the Agriculture and Food Sector: Analytical Dimensions”, in Laura Raynolds, Douglas Murray and John Wilkinson (eds.), *Fair Trade: The Challenges of Transforming Globalization*, Routledge, London, 2007, pp.33-46.

¹⁹⁴ Ferrari, Matteo, *Risk Perception, Culture, and Legal Change: A Comparative Study on Food Safety in the Wake of the Mad Cow Crisis*, Ashgate Publishing, 2009, p. 76.

¹⁹⁵ See European Commission, “Food Quality Certification Schemes”, 7 March 2012.

http://ec.europa.eu/agriculture/quality/certification/index_en.htm

¹⁹⁶ European Commission, “Geographical indications and traditional specialties”, 8 Aug 2013.

http://ec.europa.eu/agriculture/quality/schemes/index_en.htm

products and foodstuffs¹⁹⁷ and the Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.¹⁹⁸ The schemes are now regulated by Regulation 1151/2012 of the European Parliament and the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs. PDO and PGI for wines, spirits and aromatised wines are covered separately by Regulation No. 1234/2007/EC, Regulation, No. 110/2008/EC and Regulation No. 1601/91/EEC respectively.



Figure 8: PDO and PGI logos

5.6.1.2 Description

PDO and PGI are two EU certification schemes that add a label to particular food and agricultural products in order to protect and promote the names of quality agricultural products and foodstuffs. The products are often associated with a particular type of product from a particular region. Eligible food or drink registered at a European level will be given legal protection against imitation throughout the EU. Registered products are entitled to carry an EU recognised symbol which can help consumers recognise product as traditional and authentic. Producers who register their products may benefit from raised awareness of their product throughout Europe and can prevent imitation products from using protected names. The argument is that these statuses have a marketing benefit based upon an increasing European concern with the processes and origins of foodstuffs.¹⁹⁹

Protected Designation of Origin (PDO) covers agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognised know-how. Protected Geographical Indication (PGI) covers agricultural products and foodstuffs closely linked to a specific geographical area. At least one of the stages of production, processing or

¹⁹⁷ European Council, Regulation 510/2006/EC of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, *OJ L* 93, 31 March 2006, pp. 12–25.

¹⁹⁸ European Commission, Regulation 1898/2006/EC of 14 December 2006 laying down detailed rules of implementation of Council Regulation 510/2006/EC on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, *OJ L* 369, 23 Dec 2006, pp. 1–19.

¹⁹⁹ DEFRA, “Protected food names: Guidance for producers”, 28 Aug 2013. <https://www.gov.uk/protected-food-names-guidance-for-producers>

preparation must take place in the designated area.²⁰⁰ Most foodstuffs for human consumption are potentially eligible. The criteria for award of PDO are that a product originates in a specific place or region, whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production steps of which all take place within a defined geographical area. The criteria for PGI are that a product originates in a specific place, region or country, whose given quality, reputation or other characteristic is essentially attributable to its geographical origin, and at least one of the production steps of the product takes place in a defined geographical area.²⁰¹

Article 4 of Regulation 1151/2012/EU on quality schemes for agricultural products and foodstuffs states that the scheme for protected designations of origin and protected geographical indications was established in order to help producers of products linked to a geographical area by:

- (a) securing fair returns for the qualities of their products;
- (b) ensuring uniform protection of the names as an intellectual property right in the territory of the Union;
- (c) providing clear information on the value-adding attributes of the product to consumers²⁰²

Applications for certification are made to the National Authorities. A group of producers first define their product according to strict specifications. The application is then submitted to and assessed by their National Authority. The authority administers a national opposition procedure in which the application is made public and open for objections from interested parties. After this procedure, the National Authority determines if the application should be submitted to the European Commission. If so, the application is then submitted to a European opposition procedure and Commission scrutiny. If this application is successful and is not objected to, the product is registered as a protected name. Once a product is registered any producer within the designated area complying with the specification is eligible to use the name, even if they were not part of the original application. The process generally takes approximately two years.²⁰³ There is no cost for this application, but it requires time and commitment from the applicants. Successfully registered products are inspected annually with an inspection cost levied by the private companies that conduct these inspections.

5.6.1.3 Responsibility

The schemes are overseen at the European level by the Directorate-General for Agriculture and Rural Development, European Commission. The scheme created no new dedicated authorities and is managed by National Authorities in each Member State. The National Authorities are generally ministries or departments of agriculture, food, rural affairs and in some cases departments of commerce or standards authorities.²⁰⁴ There are several vectors for

²⁰⁰ There is a third related scheme, Traditional Speciality Guaranteed (TSG), which highlights traditional character in composition or production. See European Commission Agriculture and Rural Development, “Geographical Indications and Traditional Specialities”, 8 Aug 2013.

http://ec.europa.eu/agriculture/quality/schemes/index_en.htm

²⁰¹ European Parliament and the Council, Regulation 1151/2012/EU of 21 November 2012 on quality schemes for agricultural products and foodstuffs, *OJ L* 343/1, 14 Dec 2012. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:343:0001:0029:en:PDF>

²⁰² European Council, Regulation 510/2006/EC of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, *OJ L* 93, 31 March 2006, pp. 12–25.

²⁰³ European Commission, *Guide to applicants for completion of the single document*. http://ec.europa.eu/agriculture/quality/schemes/guides/guide-for-applicants_en.pdf

²⁰⁴ A list of national authorities is available at: http://ec.europa.eu/agriculture/quality/schemes/national-authorities_en.pdf

input by the public and other producers (anybody with a legitimate interest) into the application process both at the Member State level and at the European level as part of the opposition procedures. Key decisions on applications are made by Member States and then by the European Commission, which are both published. The scheme is public facing and therefore needs to maintain its reputation.

Sustainability

The scheme has been running since 1992 which suggests a degree of longevity. The scheme requires the support of the national bodies and the Commission to produce new protected denominations, but is relatively low cost to continue with existing protections. There are no costs for applications, but the costs of putting forward a successful application can be significant. One key sustainability issue for the scheme is that it is an exclusionary model. Each protection excludes competitors, and there is therefore potentially an upper limit on the size of the scheme. The scheme does not appear to be near that limit in total, but may be so in specific regions or product groups.

5.6.1.4 Criticisms and concerns

There are regular challenges to particular applications (both at EU and national level), but the national and EU scrutiny are an intended and accepted part of the application process. The scheme has been criticised as protectionist, as producing barriers to entry to certain markets, narrowing competition in existing markets, and because PDO and PGI are applied to geographical areas, as primarily benefitting those with landed property rights in those areas.²⁰⁵

There have also been criticisms of the way that the acceptability and formulation of applications varies by country and product, in that applicant groups are not uniform. Inspections are carried out by a range of different entities, including private companies and there is no complete guide to the appointment of inspectors, which results in a variable quality of inspections. The scheme itself is also potentially highly variable in terms of the benefits for different categories of products.²⁰⁶

5.6.1.5 Success factors and best practices

PDO currently has 567 registered products, whilst PGI has 557. The EU maintains a publicly accessible database of registered entities (including applications) known as DOOR.²⁰⁷ Geographical indication is arguably quite successful. A report by AND-International compared registered products across categories and across the EU with comparable non-registered products.²⁰⁸ The value premium rate (which does not take into account the costs of

²⁰⁵ Goodman, Michael K., Damian Maye and Lewis Holloway, "Ethical foodscapes? Premises, promises and possibilities", *Environment and Planning*, Vol. 42, 2010, pp. 1782-1796.
<http://www.envplan.com/epa/editorials/a43290.pdf>

²⁰⁶ Barjolle, Dominique and Bertil Sylvaude, "Some factors of success for origin labelled products in agri-food supply chains in Europe: Market, internal resources and institutions", *ISMIA*, Le Mans, 19 Feb 2002.
<http://www.origin-food.org/pdf/partners/bs19%20fev02.pdf>

²⁰⁷ European Commission Agriculture and Rural Development, DOOR Database.
<http://ec.europa.eu/agriculture/quality/door/list.html>

²⁰⁸ Chever, Tanguy, Christian Renault, Severine Renault and Violaine Romieu, *Value of production of agricultural products and foodstuffs, wines, aromatised wines, and spirits protected by a geographical indication (GI)*, Final Report, AND-International, October 2012. http://ec.europa.eu/agriculture/external-studies/2012/value-gi/final-report_en.pdf

compliance with the scheme) was estimated at 2.23, meaning that across the scheme as a whole, a PDO or PGI certification could more than double the sales price of a product.²⁰⁹

Reflecting the principle of subsidiary, the Commission has delegated much of the national part of the application process to the national level and then conducts the European level assessment at the European level. It might be expected that the majority of objections to applications come from competing local regions with the same country, most likely neighbouring regions that have a claim to be included in the protected region. Compared to national schemes (some of which do demonstrate high public recognition in particular industry sectors) PDO and PGI have broader coverage – The scheme protections apply across the EU and through bilateral trade agreements. The schemes are underpinned by a Regulation, which means they need not be transposed into national legislation in order to have validity across Europe.

Certifications under the two schemes are not exclusive to the applicant, but can also be used by producers of the same product in the same area. This has raised some issues of free riding, in that producers within that region may not contribute any effort to the application process, but will benefit from the resulting protection. However, this might also be understood as allowing diffused benefits from the certification. This is however, strongly dependent upon the delimitation of geographical regions in physical space.

Presumably, a traditional or regional product name is worth legally protecting because its quality or provenance has already been broadly acknowledged. The scheme guarantees that the quality of the product will meet the standards set in the application for protection (not an externally imposed standard), and builds upon historical reputation for quality. The product is essentially contrasting locality and traditional methods against mass market, heavily industrialised and homogeneous products that could have been produced in any location in the world and through any production process. The scheme therefore works because there is a public demand for such products, and the seal scheme recognises and certifies this, preventing other products from passing themselves off as coming from a particular geographical origin.

5.6.1.6 Conclusion

PDO and PGI is an essentially exclusionary certification model. If an application is successful then it prevents entry into that category or named foodstuff from external competitors. Certification is therefore a limited resource. The model has good European coverage due to the Regulation, but there is some variability in inspection procedures. It is difficult to imagine how well a primarily geographical model such as this would translate to a privacy seals scheme without artificial categories of certified entities. Denomination primarily uses traditional methods and limited origin as a proxy for quality, which may be inappropriate for an online model, with less developed and embedded models of privacy. Elements of the governance model might be transferable. Such elements might be the fact that groups of producers set the characteristics of their product, and how this is distinct from other products, and how this difference is recognised by a European process, which includes public consultation and challenge from other interested parties. The legislation describes a system of control by control bodies on the standard, which seems to work effectively – any scheme needs a framework of control to be effectively implemented, particularly where there are economic interests involved.

²⁰⁹ Ibid.

5.7 TELECOMMUNICATIONS EQUIPMENT SECTOR

The radio and telecommunications terminal equipment (R&TTE) sector encompasses all products using the radio frequency spectrum (e.g., car door openers, mobile communications equipment such as cellular telephones, citizens band radio, broadcast transmitters, etc.) and all equipment attached to public telecommunications networks (e.g., asymmetric digital subscriber line (ADSL) modems, telephones, telephone switches). The R&TTE is one of the few high-tech sectors where the EU is a global leader. The radio and telecoms equipment sector contributes to EU competitiveness and profits at a higher rate than the average electrical engineering industry sector does, in particular in mobile phones. Furthermore, radio and terminal equipment is an important part of the Information Society infrastructure which itself is an enabling force of the development of the knowledge economy.

5.7.1 Radio and Telecommunications Terminal Equipment Directive

This section examines the Radio and Telecommunications Terminal Equipment Directive for its relevance to an EU-wide privacy seals.

5.7.1.1 Overview

The Radio and Telecommunications Terminal Equipment Directive (the R&TTE Directive or RTTE Directive)²¹⁰ prescribes compliance for radio and telecom equipment traded in Europe.²¹¹ It replaced the Telecommunications Terminal Directive for telecoms equipment and national standards for radio transmitters. In this, it changed the compliance assessment framework from type approval to self-certification.²¹²

The main objective of the R&TTE Directive is to establish a regulatory framework for the placing on the market, free movement and putting into service of radio equipment and telecommunications terminal equipment in the European Union. The Directive came into force on the 7 April 1999. The deadline for Member States to transpose the Directive was 7 April 2000. The Directive was amended in 2003²¹³ and 2009.²¹⁴ The aim of this Directive is to create an open and competitive single market. It also aims to ensure a high level of health and safety protection, and to avoid harmful interference. The Directive sets out the regulatory framework for its operation and management.

²¹⁰ European Parliament and the Council, Directive 1999/5/EC of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, *OJ L* 91, 7 April 1999, pp. 10–28.

²¹¹ A reference to radio terminals (GSM handsets), other radio equipment (GSM base stations, car-door openers and other short-range radio devices) and fixed network terminal equipment (normal analogue telephones, ISDN terminals, cable and PC modems). Excluded items are listed in Articles 1.4, 1.5 and Annex 1 of the Directive.

²¹² This meant that terminal equipment had to achieve national approval, radios had to be type approved by the Radiocommunications Agency, and both had to undergo tests for electrical safety and EMC prior to marketing.

²¹³ European Parliament and the Council, Regulation 1882/2003/EC of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty, *OJ L* 284, 31 Oct 2003, pp. 1–53.

²¹⁴ European Parliament and the Council, Regulation 596/2009/EC of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny - Adaptation to the regulatory procedure with scrutiny - Part Four, *OJ L* 188, 8 July 2009, pp. 14–92.

The R&TTE market was previously regulated by Directive 98/13/EC²¹⁵ and more than 1,000 national approval regulations. For the operation of the Directive and the achievement of its objectives, harmonised standards play an important role. Products that comply with the harmonised standards are presumed to comply with the Directive.

The European Telecommunications Standards Institute (ETSI) and the European Committee for Electrotechnical Standardization (CENELEC) are the European standardisation organisations that bear the responsibility for the development of Harmonised Standards under the R&TTE Directive, addressing the European Commission mandates. The application of the Harmonised Standards referenced in the Official Journal of the European Union essentially enables manufacturers and service providers to benefit from a presumption of conformity with the requirements of the Directive; this allows them to sell and deploy radio and telecommunications terminal equipment within the European Union.

5.7.1.2 Description of the scheme

The R&TTE Directive is a ‘New Approach’ Directive. The ‘New Approach’ is, in fact, not that new as it was introduced in the mid-1980s but it continues to be a key policy for European regulation. It establishes a regulatory framework for placing goods and services on the European market, free movement of those goods and services, and putting them into service. The approach lays substantial stress on standardisation.

The principles of the New Approach are:

- Legislative harmonisation is limited to essential requirements that products placed on the Community market must meet in order to benefit from free movement within the Community;
- The technical specifications of products meeting the essential requirements set out in the Directives are laid down in Harmonised Standards;
- Application of harmonised or other standards remains voluntary, and the manufacturer may always apply other technical specifications to meet the requirements;
- Products manufactured in compliance with Harmonised Standards benefit from a presumption of conformity with the corresponding essential requirements.

Harmonised Standards (HS) are a particular form of European Standard (EN) and can only be produced by the three recognised European Standards Organizations (CEN, CENELEC and ETSI). The work is consensus based and Harmonised Standards are adopted through a public approval process. Their application is voluntary.

The EC harmonises the essential requirements for radio equipment so as to avoid harmful interference, via the New Approach R&TTE Directive. The New Approach R&TTE Directive regulates the requirements that products must meet in order to be placed on the market and put into service (without prejudice to conditions attached to authorisations). The usual way for manufacturers to comply with these requirements is to apply Harmonised Standards developed by ETSI and CENELEC (where harmonised standards are not applied, a Notified Body has to be consulted. R&TTE Compliance Association has specific responsibilities in

²¹⁵ European Parliament and the Council, Directive 98/13/EC of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity, *OJ L* 74, 12 March 1998, pp.1-26.

respect of Notified Bodies appointed under EU R&TTE Directive).²¹⁶ The Directive is implemented at national level by Member States, and monitored by Market Surveillance Authorities.

The Telecommunications Conformity Assessment and Market Surveillance (TCAM) Committee²¹⁷ assists the Commission in managing the R&TTE Directive. TCAM harmonises the requirements for radio equipment to use the radio spectrum effectively, and make sure there won't be any radio interference, aiming to ensure the good functioning of the internal market of the European Union. The European Commission in consultation with TCAM prepares mandates for development of Harmonised Standards. These are subject to approval of the 98/34 Committee set up under the Directive on the procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (98/34/EC). TCAM also facilitates the exchange of documents between Member States and the Commission.

Member States also need to ensure that the manufacturers or the persons responsible for placing the apparatus on the market provide information on its use in the documentation or packaging, together with the declaration of conformity with the essential requirements. More specifically, for radio equipment, this information must be sufficient to identify on the packaging and in the instructions for use of the equipment the Member States (or the geographical area within a Member State) where the equipment is intended to be used. For telecommunications terminal equipment, such information should also identify the interfaces of the public telecommunications networks to which the equipment is intended to be connected.

The obligations under the R&TTE Directive include:

- Conformity with the essential requirements (through a conformity assessment, and having consulted the technical documentation)
- Identification (i.e., model, manufacturer, serial or batch number)
- Indication of the intended use of the equipment
- Indication of the countries where the equipment is intended to be used.
- Indication of any restrictions of use (for class 2 equipment only).
- Indication of the interfaces of the networks to which the equipment is intended to be connected (TTE only)
- Declaration of conformity.

Manufacturers are responsible for making the Declaration of Conformity, which is supplied with the equipment in a summarised form. The Declaration indicates the standards that have been applied to establish conformity. The manufacturer is also required to label the equipment with the CE mark to indicate compliance, plus certain other marks in specific cases.²¹⁸

The Directive specifies the marking of a specific R&TTE component. The Directive enables the surveillance authorities to gain access to information on equipment. In particular, it requires the declaration of conformity and technical documentation to be made available for

²¹⁶ The Radio and Telecommunications Terminal Equipment Compliance Association (R&TTE CA). <http://www.rtteca.com/index.htm>

²¹⁷ TCAM, TCAM Committee. <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp>

²¹⁸ ETSI, "R&TTE Questions and Answers". <http://www.etsi.org/index.php/technologies-clusters/technologies/regulation-legislation/r-tte-q-a#eleven>

inspection by them. This information must be made available by the manufacturer, the importer or person responsible for placing the equipment into market.

Article 3 of the R&TTE Directive which specifies its essential elements, in sub-section 3 (c) states that in accordance with the procedure laid down in Article 15 (Regulatory committee procedure), the Commission may decide that the apparatus with certain equipment classes or apparatus of particular types shall be so constructed that it incorporates safeguards to ensure that the personal data and privacy of the user and of the subscriber are protected.

5.7.1.3 Responsibility

A person or entity (or company) placing radio equipment on the market is responsible for its compliance with the R&TTE Regulations. If a person (or entity) alters another manufacturer's radio equipment, or re-brands it as his own, and then places it on the market, that person or company also has the obligation to comply with the Regulations. Whoever has the sole responsibility must take all measures necessary to ensure that each individual item of radio equipment placed on the market is compliant with the Regulations. Failure to comply may constitute a criminal offence punishable on conviction by a fine and/or imprisonment. A market surveillance authority can take enforcement actions relating to protection and management of the radio spectrum.

The European Commission is responsible for harmonising the essential requirements for radio equipment so as to avoid harmful interference, via the New Approach R&TTE Directive. The Telecommunications Conformity Assessment and Market Surveillance (TCAM) Committee²¹⁹ assists the Commission in managing the R&TTE Directive. At national level, radio spectrum is managed by National Administrations (i.e., National Surveillance Authorities), which adopt a national table of radio spectrum allocations, define a framework for use of the radio spectrum and assign radio spectrum to the different users, via licences or via licence-free arrangements.

The Directive is applicable to all Member States of the European Union. It is also applied in non-member countries if there is a relevant agreement. Member States need to ensure that equipment complies with the essential requirements of the Directive where it is properly installed, maintained and used, which is a condition for its being placed on the market, and that manufacturers comply with their obligations, as stated in the previous section. At national level, radio spectrum is managed by National Administrations (i.e., National Surveillance Authorities), which adopt a national table of radio spectrum allocations, define a framework for use of the radio spectrum and assign radio spectrum to the different users, via licences or via licence-free arrangements.

An ADCO R&TTE report to TCAM on market surveillance statistics for 2012 provides some statistics on market surveillance.²²⁰ It states that in total, 24 market surveillance authorities had inspected 9562 R&TTE equipment in Austria, Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom. Around 9918 equipment were been found non-compliant to the R&TTE

²¹⁹ TCAM, TCAM Committee. <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp>

²²⁰ Group of Administrative Co-operation under the R&TTE Directive (ADCO R&TTE), "ADCO R&TTE report to TCAM on market surveillance statistics for 2012", 20 May 2013. http://ec.europa.eu/enterprise/sectors/rtte/files/market-surveillance-statistics-2012_en.pdf

provisions. The report clarifies that “due to the fact that not all provisions were checked by all involved market surveillance authorities, the effective amount of non-compliant equipment may be higher”.²²¹

5.7.1.4 Sustainability

The R&TTE Directive came into force on the 7 April 1999. Before the RTTE came into force the market was regulated by Directive 98/13/EC²²² and more than 1000 national approval regulations. Harmonised standards play a key role in the operation as well as the achievement of the Directive’s objectives. Products in compliance with the harmonised standards are presumed to comply with the Directive. This enables manufacturers and service providers to sell and deploy the radio and telecommunications terminal equipment within the EU.

Certification is awarded to manufacturers who demonstrate compliance of their equipment with the related Harmonised Standard, if they fulfil certain obligations and if they accompany it with a declaration of conformity. Certification is not obligatory but compliance is. Depending on the class of equipment they place in the market, manufacturers and service providers, have to comply with specific procedures and marking which may include some costs.

Given that the scheme has been transposed by all Member States of the EU, replacing national regulations, it is considered quite sustainable.

5.7.1.5 Criticisms and concerns

There have been two impact assessment exercises concerning the Directive 1999/5/EC. The first one was performed by Technopolis in 2009²²³, and the second internally by the Commission in 2012 (concerning a potential revision of the Directive).²²⁴

The two exercises show a low level of compliance with the requirements from EU Market Surveillance Authorities (MSAs), ranging between 29 per cent and 56 per cent. That is even lower for issues concerning administrative compliance. Major issues (distilled from the two exercises) that need further attention include:

- Limited traceability of products and of manufacturers
- Ambiguity and unnecessary complexity of the Directive demanding a high effort from manufacturers to understand their obligations

²²¹ Ibid.

²²² European Parliament and the Council, Directive 98/13/EC of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity, *OJ L* 74, 12 March 1998, p.1-26.

²²³ Radauer, Alfred, Ruta Rannala, Effie Pitsaros, Lorena Rivera-Leon and Rurik Holmberg, *Impact Assessment concerning a proposed mandatory registration system in the scope of Directive 1999/5/EC*, Final Report, Study carried out by the Technopolis Consulting Group for the European Commission, DG Enterprise and Industry, 5 Oct 2009. http://ec.europa.eu/enterprise/sectors/rtte/files/technop-ia-radio-finrep_en.pdf

²²⁴ European Commission, Commission Staff Working Document, Impact Assessment, Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the harmonisation of laws of the Member States to the making available on the market of radio equipment, SWD (2012) 329 final, Brussels, 17 Oct 2012. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0329:FIN:EN:PDF>

- Too many administrative provisions with no obvious added value (e.g., CE Marking, notified body number, alert sign should be affixed on the equipment, on the package and on user instructions)
- Lack of clarity on how to apply the Directive for some particular categories of equipment (e.g., equipment modifiable by software and installations made up of multiple components)
- Lack of interoperability for equipment such as accessories
- Different legal requirements for similar equipment leading to legal uncertainty
- Excessive delays in the development of harmonised standards (up to several years) and in the publication of references in the Official Journal (up to 1 year)
- Difficulties in obtaining opinions from notified bodies in the absence of approved rules for the use of spectrum.

The review of the R&TTE Directive is intended to improve the implementation of the essential requirements in the Directive. The aim is to maintain and further improve the Single Market, avoid or eliminate any unnecessary costs and burden, in particular for SMEs, and further promote innovation.

5.7.1.6 Success factors and best practices

The most important success factors of the RTTE Directive are:

- It is applicable across the EU Member States so manufacturers and retailers of equipment don't have to comply with any national specific regulations;
- The scheme is voluntary and self-certified, not obligatory;
- Compliance to regulations (by a declaration of conformity) is accepted with no need to become officially certified.

5.7.1.7 Conclusion

The R&TTE Directive succeeded in creating an open and competitive market for the free movement and putting into service in the European Union (EU) of radio equipment and telecommunications terminal equipment. All Member States have transposed the Directive. Though the scheme has established its value, it has raised concerns, which remain to be addressed, such as limited traceability of products and manufacturers, ambiguity and complexity, administrative burden, lack of clarity on how to apply the Directive, varied legal requirements, difficulties in obtaining opinions from notified bodies in the absence of approved rules, etc. One concern in particular relates to the how the Directive might be too vague and distanced from market requirements that might explain the high levels of non-conformity. An EU privacy seals scheme would do well to address such issues as it was being developed and progresses, if it is to be effective.

6 BRIEF ANALYSIS AND LESSONS LEARNT FROM EU CERTIFICATION PROJECTS AND STUDIES

This section will briefly analyse some European certification projects and studies and present their findings and impact with a view to: broaden the scope of this task and bring added value to the analysis of certification schemes in this task; to derive some lessons that will be broadly useful in maximising the potential impact of the current study; and to specifically provide further learning for the following tasks of the study (specifically Task 4 on policy options). The studies and projects analysed here (ordered chronologically) include a mix of general certification studies and specific sectoral studies.

6.1 THE SOLAR KEYMARK PROJECTS (I AND II)

The Solar Keymark is a voluntary third party scheme used to certify solar thermal products in Europe and recognised globally.²²⁵ The scheme aims to “reduce trade barriers and promote the use of high quality solar thermal products in the European market and beyond” while specifying that a product “conforms to the relevant European standards and fulfils additional requirements”.²²⁶

The Solar Keymark is a CEN (the European Committee for Standardization) and CENELEC (European Committee for Electrotechnical Standardization) European mark scheme, focussing on: solar thermal collectors (based on European standard series EN 12975) and factory made solar thermal systems (based on European standard series EN12976. The European Solar Thermal Industry Federation (ESTIF) and CEN²²⁷ developed the scheme in 2003 with support from key European test labs and the European Commission. On 1 January 2011, over 1200 Solar Keymark licences were granted²²⁸.

The basis of the scheme was developed under the framework of an EU co-financed project ALTENER - Solar Keymark I- AL/2000/144 (2000-2003) and followed-up in Solar Keymark II (EIE/05/052/SI2.420194). The Solar Keymark has achieved a reasonable level of success – ESTIF projects that it is “the most successful Keymark scheme and more than two thirds of the collectors sold had Solar Keymark”.

The rules for the Solar Keymark certification scheme follow the general Keymark rules. The specific Solar Keymark rules acts as a supplement to the general rules, giving the specific requirements related to the particular Keymark certification of solar thermal products.²²⁹

According to ESTIF, the scheme has its advantages. For manufacturers, it provides a simpler testing procedure, one test valid for all European countries, freedom of choice amongst the accredited test labs, easier introduction of new products in different European countries, and simplified procedures for replacing components in certified products. For consumers, the benefits are stated to include: high quality products, guarantee that the product sold is

²²⁵ ESTIF, “The Solar Keymark Scheme”. <http://www.estif.org/solarkeymarknew/>

²²⁶ Ibid.

²²⁷ CEN, <http://www.cen.eu/cen/pages/default.aspx>

²²⁸ QAIST and ESTIF, *THE Quality Label for Solar Thermal Products in Europe*, Brussels, November 2010. <http://www.estif.org/solarkeymarknew/images/downloads/brochures/Solar-Keymark-brochure.pdf>

²²⁹ ESTIF, “The Solar Keymark Scheme Rules”. <http://www.estif.org/solarkeymarknew/the-solar-keymark-scheme-rules>

identical to the tested product, confirmation that products are fully tested according to the relevant standards and eligibility for subsidies.²³⁰

Designated certification bodies (authorised by the CEN Certification Board) award the Solar Keymark after the product is tested and satisfactorily assessed by an accredited “test lab”. The tested product must be a “sample taken randomly from the current production or stock by an independent inspector”.²³¹ There is also an independent on-site inspection of the factory’s quality management system and ongoing surveillance.

To start the certification process, a product manufacturer can contact one or more certification bodies who advise on the procedure. Some certification bodies only work with specific test labs.²³² The initial testing, inspection and certification costs per product range between €6,000 and €12,000. Annual factory inspection, bi-annual product inspection and certification costs range from €2,000 to €3,000 per year. Note that the more products tested, the lesser the per-unit costs.

One of the plus points of the Solar Keymark Scheme is that the scheme is well known and accepted in the EU (in national subsidy schemes and regulations) except with a few exceptions (where additional regulations apply).

One challenge in relation to the Solar Keymark is that some countries still do not accept the Solar Keymark scheme – e.g., Brazil, China, India, Turkey and the USA.²³³ Another challenge to the scheme comes from scheme members having to meet additional requirements prescribed in certain countries such as France,²³⁴ Germany,²³⁵ Ireland,²³⁶ Spain²³⁷ and UK.²³⁸ Industry has criticised the scheme for not meeting “the needs of the industry for a single, Europe-wide test to ensure free movement of goods and services” and recommended additional tests be included in the testing process of the scheme.²³⁹ There have also been calls for the scheme’s rules and standards to be made more efficient and open to new developments.²⁴⁰

²³⁰ ESTIF, “THE Quality Label for Solar Thermal Products in Europe”, Brussels, November 2010, p.3 <http://www.estif.org/solarkeymarknew/images/downloads/brochures/Solar-Keymark-brochure.pdf>

²³¹ Ibid, p.4.

²³² Ibid. p.4.

²³³ Fritzsche, Ulrich, “Collector certification across the world - challenge or opportunity”, *SME Thermal*, Berlin, 2012. <http://solarthermalworld.org/sites/gstec/files/Ulrich%20Fritzsche%20SMEThermal%202012.pdf>

²³⁴ Some insurance companies insist on the use of CSTBat. CSTB, “Les produits certifiés par le CSTB”. <http://www.cstb.fr/evaluations/certification-des-produits-et-des-services/offre/produits.html>

²³⁵ A *Blue Angel* declaration (525 kWh/a) is also required.

²³⁶ NSAI (National Standards Authority of Ireland), NSAI Agrément. <http://www.nsai.ie/About-NSAI/Departments/Agrement.aspx>

²³⁷ In Spain an ISO 9001 certificate is also required.

²³⁸ This scheme provides “ongoing independent, third party assessment and approval of companies who wish to demonstrate that their pitched roof installation kits meet and continue to meet the requirements of this standard”. Department of Energy and Climate Change (DECC), MCS012: Product Certification Scheme Requirements: Pitched Roof Installation Kits, Issue 1.1, <http://www.microgenerationcertification.org/images/MCS%20012%20-%20Issue%201.1%20Product%20Certification%20Scheme%20Requirements%20-%20Pitched%20Roof%20Installation%20Kits%202013.06.21.pdf>

²³⁹ Elmes, Stuart, “Is the Solar Keymark Fit for Purpose?”, *Solar Business Focus UK*, Vol. 7, 2013. <http://www.solarblogger.net/2013/05/is-solar-keymark-fit-for-purpose.html>

²⁴⁰ Sterrer, DI Roland, “Solar Keymark in Europe: Advantages - Disadvantages”, TRAN-SOLAR: Transfer of experience for the development of solar thermal products, Hungary, 12 Aug 2009. http://www.cres.gr/trans-solar/downloads/Event_hungary/4_STERRER.pdf

6.2 UNICE-BEUC E-CONFIDENCE PROJECT

The UNICE-BEUC's e-Confidence project represented one of the European Commission's e-confidence strategy responses to address the "deficit between a growing rate of Internet penetration in Europe, and the continuing low confidence in e-commerce and cross-border transactions".²⁴¹

The Union of Industrial and Employers' Confederations of Europe (UNICE) and the Bureau Européen des Unions de Consommateurs (BEUC)²⁴² jointly undertook an initiative to help promote high standards of consumer protection and encourage e-commerce. In 2001, the project presented a set of European Trustmark Requirements (ETR) – i.e., a set of requirements for trust mark schemes that wished to participate in the e-confidence initiative to comply with.²⁴³ The ETR were to offer a "basis for good online practice". They were not seen as means of overriding or replacing mandatory provisions, rather viewed as "supplementary to legal obligations and do not affect consumers' statutory rights". The project encouraged trust mark schemes to either "meet or exceed the ETR". It was also suggested that the "ETR and the e-confidence initiative should be subject to regular review in order to be able to keep pace with the development of the online market and technological change".²⁴⁴

The ETR are summarised below:

High standard, measurability and purpose of trust mark schemes

This required trust mark schemes to "comply fully with relevant EU legislation in relation to any obligation they place on subscribers or any practices they recommend to them, and should require that subscribers take the necessary steps to ensure their compliance with their legal obligations". It also recommended schemes comply with the relevant OECD guidelines on electronic commerce and "add value for consumers and subscribers through complementing or supplementing legal obligations". This requirement also called for ensuring the measurability of the performance of trust marks and for them to "promote high levels of customer service which should be responsible, flexible and efficient".²⁴⁵

Transparency of trust mark schemes for consumers and business

The second requirement calls upon trust mark schemes to publish and make clear to both consumers and business: the criteria for participation in the trust mark scheme, the trust mark scheme requirements, the subscribers participating in the trust mark scheme, and the identity of the independent third party. It also recommended trust mark schemes publish annual reports, and use "plain and intelligible language" and provide all information in "clear, concise, intelligible, timely, accurate and easy accessible manner".²⁴⁶

²⁴¹ European Commission, "E-Confidence Initiative: Time for Stakeholders to Draw Conclusions", 23 April 2004. <https://ec.europa.eu/digital-agenda/en/news/e-confidence-initiative-time-stakeholders-draw-conclusions>

²⁴² <http://www.beuc.org/>

²⁴³ BEUC, "UNICE – BEUC e-Confidence project", 2002.

<http://www.beuc.org/BEUCNoFrame/Docs/1/BNNPBBOBFJLIJFFIDLOMCBNOPDBY9DWDPN9DW3571KM/BEUC/docs/DLS/2002-01026-01-E.pdf>

²⁴⁴ Ibid., p.5

²⁴⁵ BEUC, op. cit., 2002, p.6.

²⁴⁶ BEUC, op. cit., 2002, p.6.

Accessibility and visibility of trust mark schemes for consumers and business

Trust mark schemes should ensure that trust marks are “easily visible to the consumer” and details of the scheme (including scheme requirements) are easily accessible to consumers. It also stresses keeping subscriptions of schemes in principle “open to any interested organisation or person, regardless of their place of establishment” and “any decisions to accept or reject applicants as subscribers should not be discriminatory and should be based on transparent membership criteria”.²⁴⁷

Scope and content of trust mark schemes

According to the ETR, trust mark scheme subscribers must use “plain and intelligible language” and ensure that their commercial communications “are fair and in accordance with good marketing practices”.²⁴⁸ The ETR also prescribe certain good practices for scheme subscribers in relation to children (e.g., ensuring that commercial communications and similar activities take into account the age, knowledge and level of maturity of the intended audience, identify adult content, and make available guidelines for safe shopping for children. The ETR also prescribe requirements in relation to pre-contractual information (e.g., Information on goods and services offered, including price; information on the contract (terms and conditions), payment information and other consumer rights). The ETR also impose requirements in relation to confirmation process, contractual performance, payment, security, data protection, internal complaints management and consumer dispute settlement.

Operation of trust mark schemes

The ETR also prescribe that trust mark schemes “must have the resources necessary to assess applicants, to operate a trustmark scheme and to deal with complaints regarding non-compliance with the trustmark requirements”.²⁴⁹

Assessment of applicants for trust mark schemes

According to the ETR, trust mark schemes must have a “clear procedure in place for the assessment of applicants for trustmark schemes” – this must include an assessment of the applicant’s compliance with the scheme requirements (which includes a check of the applicant’s relevant website, its corporate identity and its internal procedures to ensure compliance).²⁵⁰

Monitoring system

The ETR prescribe that trust mark schemes regularly monitor compliance with their requirements through means such as random checks (e.g., mystery shopping) and encourage user and consumer feedback.

²⁴⁷ BEUC, op. cit., 2002, p.7.

²⁴⁸ BEUC, op. cit., 2002, p.7.

²⁴⁹ BEUC, op. cit., 2002, p.12.

²⁵⁰ BEUC, op. cit., 2002, p.12.

Enforcement system

In relation to enforcement the ETR prescribe that trust mark schemes have “adequate and meaningful” and transparent enforcement mechanism and take the necessary steps to ensure that subscribers comply with the scheme requirements within short periods of time. It calls for establishing “dissuasive and proportionate sanctions” such as media publicity, financial fines, and withdrawal of the trust mark.²⁵¹

Technical security

The ETR prescribe that trust mark schemes “regularly report on fraudulent use of the trustmark” as this is “critical to establishing confidence”. It specifies also that trust marks are authenticated using effective technical mechanisms.²⁵²

The e-Confidence project envisaged the following steps in the certification process:

1. Request a *declaration of compliance* form from the e-Confidence Committee
2. Fill out the *declaration of compliance*
3. Ask an Independent Third Party to certify the *declaration of compliance*
4. Send the duly completed and certified declaration to the eConfidence Committee.
5. The eConfidence Committee on receiving an appropriate application (a duly completed “declaration of compliance” form, regularly certified by an Independent Third Party), shall:
 - Allow the trustmark Scheme to add this compliance to its trustmark;
 - Add the trustmark Scheme to the e-Confidence website.²⁵³

Though the EC itself recognised that the joint work on the ETR deserved to be commended and set a “benchmark for best practices in e-commerce”, the ETR had limited impact.²⁵⁴

The e-Confidence project itself evidenced some internal disagreements in two aspects of the ETR.²⁵⁵ The first point of disagreement between BEUC and UNICE was the time for acknowledgement of order in relation to the contractual performance criteria. The second disagreement related to the payment criteria. Despite expectations that the ETR would be speedily implemented after presentation to the Commission at the end of 2001, no follow-up ensured. A Commission Staff Working document presents an analysis of the shortcomings and lessons learned from the project.²⁵⁶ One, was the failure of the Scheme to garner financial support from the industry to set up the certification and monitoring scheme (attributed to the “slower than expected evolution of the e-commerce market and the collapse of the “dot.com bubble”).²⁵⁷ Two, the Commission services believed that there were certain gaps in the ETR framework and that “the proposed monitoring and certification system should be revisited in

²⁵¹ BEUC, op. cit., 2002, p. 12.

²⁵² BEUC, op. cit., 2002, p.12.

²⁵³ BEUC, op. cit., 2002.

²⁵⁴ European Commission, Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative, Commission staff working document, Brussels, 8 November 2004, p.8
http://ec.europa.eu/consumers/cons_int/e-commerce/e-conf_working_doc.pdf

²⁵⁵ BEUC, op. cit., 2002, p.10.

²⁵⁶ European Commission, “Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative”, Commission staff working document, 8 Nov 2004. http://ec.europa.eu/consumers/cons_int/e-commerce/e-conf_working_doc.pdf

²⁵⁷ Ibid., p. 8.

the light of recent experience, and with the aim to make it more operational than the current proposal”, particularly concerning legislative requirements.²⁵⁸ Three, a major flaw of the ETR was that it did not have a business plan specifying how the certification mechanism proposed in the ETR would be financed and maintained.

6.3 EFTA STUDY ON CERTIFICATION AND MARKS IN EUROPE

The European Free Trade Association (EFTA) commissioned a study on the supply of and demand for certification services in 2007 with the objective of “creating a better understanding of crucial parts of the market for marks in Europe.”²⁵⁹ The results of the study were published in 2008.²⁶⁰

The key findings of the study were:

- Certification and marking in Europe is a confused market
- Manufacturers do not always affix a mark to a certified product.
- For the product sectors studied, CE marking is increasingly the only marking found.
- Relocation of production gives a new boost to certification and marking of consumer products.
- SMEs hit hardest by multiple certification and marking.
- Few individual consumers look for marks on a product, though consumers in Germany and in some other countries may be an exception to this.
- Consumer organisations don’t trust marks.
- Manufacturers more frequently seek voluntary certification for consumer products.
- Mistrust in the CE marking drives certification.
- European marks have been slow to develop.
- Certification and marks at national level, with little mutual recognition still rule for construction products in several countries.

The Study identified potential critical success factors for the development of future voluntary EU certification marks. One was that a new certification scheme should be launched in a new product area where there were no competing national certification schemes. Another critical factor was the scheme’s basis. The Scheme had to have strong support from the product supply-side, strong support from at least one major certifier; strong visible support from the European Commission and ideally from national authorities. The scheme also would have to bring added value – i.e., be a quality differentiator in the marketplace. Another critical factor was putting in place a development team that would remain in place till the scheme achieved success. The benefits of any proposed scheme had to outweigh the costs. In addition, any conflicting national schemes and standards had to be withdrawn. The Study also stressed the importance of strong promotion from all stakeholders and that “recognition is everything”.²⁶¹

²⁵⁸ European Commission, “Consumer Confidence”, op. cit., 2004, p. 8.

²⁵⁹ EFTA, “EFTA Study on Certification and Marks in Europe.” <http://www.efta.int/publications/study-certification-marks.aspx>

²⁶⁰ Consumer Research Associates Ltd., *Certification and Marks in Europe, A Study commissioned by EFTA*, European Free Trade Association, January 2008. <http://www.efta.int/sites/default/files/publications/study-certification-marks/full-report.pdf>

²⁶¹ Ibid., p. 64.

6.4 EU ONLINE TRUSTMARKS (SMART 2011/0022)

The Study on ‘EU online Trustmarks: Building Digital Confidence in Europe’ carried out by TNO and IISA for the European Commission (SMART 2011/0022)²⁶² surveyed and analysed the state of play in relation to European trust marks (via desktop research, workshops). The Study was commissioned “to identify and evaluate policy options for the development of cross-border trustmarks in Europe and, possibly, for a stakeholder platform for EU online trustmarks”.

Key findings of the Study (extracted from the Final Report):²⁶³

- Trust marks are a form of branding and their use is especially important for SMEs.
- Trust marks may cover a wide range of topics, such as compliance with (consumer) regulations, the financial situation of the online shop, privacy and security measures taken to protect transactions and personal data of consumers, clarity of information provided on the website, dispute resolution in case a conflict emerges between online shops and consumers, mystery shopping and payment and delivery methods.
- Around 30,000 online shops in the EU carry a trust mark (there may be a significant number of duplications within this number).
- The majority of surveyed trust marks operate in only one country, while 4 EU trust marks operate across borders: SafeBuy (UK), TÜV Süd (Germany), Trusted Shops (Germany) and ISIS (UK).
- While the core business of trust marks is to assess the fairness and correctness of the online sales process, they also provide services, such as assurance policies and dispute resolution mechanisms.
- Trust marks provide trust in two ways. They create trust upfront by creating ‘face-value’; and by supporting the after-sales process in case a transaction is not successful.
- The trust marks landscape is heterogeneous and dominated by the speed and diversity of developments in the eCommerce market.²⁶⁴

The Study also highlighted several policy related findings based on stakeholder engagement:²⁶⁵

- Stakeholders confirm that trust marks are an important factor for the promotion of cross-border eCommerce and that the way they operate is central their trust-building capability.
- The EC as one of the main bodies in charge of the cross-border dimension in the European Union can effectively contribute to support the cross-border activity of trust marks.
- The trust relationship between customer and merchant is of utmost importance. The most important driver is competitive pricing. Not all barriers to eCommerce can be overcome by trust marks.

²⁶² See European Commission, EU online Trustmarks - Building Digital Confidence in Europe (SMART 2011/0022).<http://ec.europa.eu/digital-agenda/en/news/eu-online-trustmarks-%E2%80%93-building-digital-confidence-europe-smart-20110022>

²⁶³ TNO and IISA, *EU Online Trustmarks: Building Digital Confidence in Europe*, A study prepared for the European Commission DG Communications Networks, Content & Technology Final Report, The Publications Office of the European Union, 2012, p. 6.

http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1815

²⁶⁴ Ibid.

²⁶⁵ TNO and IISA, op. cit. 2012.

- The promotion of cross-border eCommerce requires a comprehensive consideration of fostering and hampering factors and the identification of the most appropriate policy and regulatory solutions, also seeking the commitment of industry.
- Trust marks stakeholders indicate that government bodies are the most trustworthy warrantors in the field, followed by foundations or non-profit organizations
- Stakeholders indicate that a set of minimum trust mark features would be an important step to reduce the heterogeneity in the trust mark field and to define what trust marks should look like.
- There is a significant uncertainty among stakeholders on the regulatory basis for a trust mark.²⁶⁶
- There is no clear preference for EU regulations, trust marks, codes of conduct, or national regulations.
- The trust mark stakeholders provide an indication on which policies the EC should put in place to support the development of cross-border trust marks:
 - Define a minimum set of harmonised trust marks trust-building features to be guaranteed by the trust mark certification.
 - Promote awareness-raising actions of stakeholders.
 - Identify the general, operational, legal, and trust barriers which are within the scope of trust marks.

Based on the research, the Study examined four policy options: do nothing, self-regulation/self-organisation ('self-constructed federation' of trust marks), a European trust mark accreditation scheme, and an EU-level trust mark.

The Study concluded that the preferred option was to first develop a self-regulatory scheme and then convert it into an EC-backed accreditation scheme. For this the Study recommended the following policy action:

- EC promotes a self-regulatory scheme in the first instance, developed in co-operation with stakeholders (the EU trustmarks stakeholder platform would be the basis for that)
- In a second stage, when a self-regulatory scheme would be operational, the stakeholder platform would further develop a EU accreditation scheme.

Both options were to be “driven by the EC and largely supported by industry, guaranteeing an appropriate and balanced representation of stakeholders”.²⁶⁷

As of March 2013, the Commission is considering the results of the Study and is assessing, “the possibility of taking the trustmark topic into a multi-stakeholders platform”.²⁶⁸ It is also examining the effects of other similar initiatives such as the Multi-Stakeholder Dialogue on Comparison Tools (MSDCT), conducted by the Directorate-General for Health and Consumers (DG SANCO)²⁶⁹. DG SANCO has launched a study to map existing comparison

²⁶⁶ The final report of the Study states, “The position on the regulatory framework of trustmarks operations is most likely related to the very different attitudes, opinions and different levels of information on trustmarks, their operation and their rules. There are very mixed opinions on the regulatory setting, with contradictory positions also within the same respondent group.” TNO and IISA, op. cit. 2012, p.6.

²⁶⁷ TNO and IISA, op.cit. 2012, p. 82.

²⁶⁸ European Commission, EU online Trustmarks - Building Digital Confidence in Europe (SMART 2011/0022). <http://ec.europa.eu/digital-agenda/en/news/eu-online-trustmarks-%E2%80%93-building-digital-confidence-europe-smart-20110022>

²⁶⁹ DG SANCO, “Comparison Tools Report from the Multi-Stakeholder Dialogue: Providing consumers with transparent and reliable information”, Report presented at the European Consumer Summit, 18-19 March 2013. http://ec.europa.eu/consumers/documents/consumer-summit-2013-msdct-report_en.pdf

tools in the EU as well as third-party verification schemes. The aim of the study is to assess their functioning and reliability as well as their influence on consumers' behaviour. The results are expected by July 2014.

6.5 A PAN-EUROPEAN TRUSTMARK FOR E-COMMERCE: POSSIBILITIES AND OPPORTUNITIES

Civic Consulting undertook a study during March and June 2012 on “A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities” for the European Parliament's Committee on Internal Market and Consumer Protection.²⁷⁰ The study examined the possibilities and opportunities of creating a pan-EU trust mark for e-commerce by analysing existing e-commerce marks, the relevant EU legal framework and main policy options.²⁷¹

The study report presents information on: European e-commerce trust marks (such as Confianza Online, e-maarket, Thuiswinkel Waarborg, Trusted Shops, Internet Shopping is Safe (ISIS), and the Euro-Label), the advantages and disadvantages of an EU e-commerce trust mark, and the legal framework for e-commerce trust marks. It also presents some policy options (i.e., no intervention, encouraging self-regulation, co-regulation, establishment of an EU trust mark accreditation scheme and establishment of an EU e-commerce trust mark and presents their advantages and disadvantages of policy options. Further, in relation to an EU e-commerce trust mark, it examines scope, nature, enforcement, legal and other challenges and presents a roadmap for introducing it.

Key findings as distilled from the study report:

- There is significant diversity among existing trust marks in the EU.
- Research findings concerning the actual effects of trust marks are scarce and not consistent.
- There has been some progress in recent years with the consolidation and expansion of some of the existing trust marks.
- The potential advantages and disadvantages of an EU trust mark are conditional upon its design.
- The main possible advantages of an EU trust mark are: support for SMEs; enhanced cross-border co-ordination of trust marks and exchange of best practices; overcoming language barriers; increased legal certainty; increased credibility of accredited trust marks; broad recognition among consumers in different MS; increased trust in online shopping; enhanced cross-border trade.
- The possible disadvantages: the administrative burden for businesses; potential confusion among consumers; interference with existing trust marks; difficulties with ensuring consistency across the EU; the cost of administering the trust mark; gaps in coverage in case of an accreditation scheme for existing trust marks; and discrediting compliant traders and other trustmarks in case of lacking enforcement.
- There is no particular piece of EU legislation addressing only trust marks, but some legislation touches upon several relevant aspects.
- Any code of conduct underlying a possible EU trust mark for consumer protection in e-commerce must be understood in the context of already existing EU legislation

²⁷⁰ Civic Consulting, *A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities*, A European Parliament Study, IP/A/IMCO/ST/2012-04, Berlin, July 2012.

<http://www.europarl.europa.eu/committees/hu/studies/download.html?languageDocument=EN&file=75183>

²⁷¹ Though the consortium prefers the use of the term “trust mark”, we have stayed true to the original texts where material has been quoted from them in this section.

- A trust mark is likely to be perceived as a guarantee by a consumer. This entails that trust mark must guarantee something that is not already prescribed by law.
- The trust mark may establish expectations, such as guarantees with consumers that the issuer may be liable for, to the extent consumers are disappointed with regard to their reasonable expectations.

Specifically in relation to an EU-wide trust mark, key conclusions were:

- If EU policy-makers decide to introduce a trust mark at EU level, this would basically be akin to establishing a privately operated trust mark in the sense that the desired scope can be freely chosen. It is advisable for an EU trust mark to provide for procedures for both initial and recurrent assessment as well as sanctions in case a violation of the code of conduct is identified.
- If policy-makers decided to introduce a mandatory EU trust mark for e-commerce, it would be necessary to introduce EU legislation imposing the requirement on traders and to examine potential conflicts with existing EU legal framework. From a political and economic perspective, a mandatory EU trust mark might come with additional challenges.
- If an EU institution should award the trust mark, a regulation would be fit for the purpose. If the approach was for the Member States to set up national institutions and ensure accreditation at national level, a directive would be suitable.
- When laying out the principles for certification of the EU trust mark, it would be important to note that compliance with some requirements is much easier to control than with others. In contrast to compliance with information requirements that are generally easy to assess, the adherence to requirements concerning commercial practices and the processing of personal data seems rather difficult.
- Challenges inherent in the setting-up of an EU accreditation scheme or an EU trust mark would include legal implications, proper enforcement and sustainable funding, among others. Awareness among consumers is considered a key factor for success. Analysis for this study has revealed that it typically takes a minimum of five years from the inception of a trust mark until considerable dissemination.
- Differences in substantive law that continue to exist must be considered. They can be overcome by adopting a code of conduct that satisfies requirements in all Member States (highest common denominator). Another approach to deal with differences in national consumer protection law is to fully harmonise the areas in question.

Since the Study is relatively recent, it has not been possible to gauge its wider impact.²⁷² According to Ecommerce Europe (a European e-commerce association), the Commission is “evaluating its next steps”.²⁷³ However, many of the Study’s conclusions are generic enough to be taken into consideration of policy options for EU-wide implementation of a privacy seal scheme.

6.6 CONCLUSIONS

The above exercise enables us look more closely at a variety of EU based certification studies and projects and bring to the fore some critical elements or factors that need to be considered

²⁷² A request for information was sent to the administrator of the Study report. No reply has been received so far.

²⁷³ Ecommerce Europe, “Trustmark dialogue with the European Commission”, 22 Nov 2012. <http://www.ecommerce-europe.eu/cms/showpage.aspx?id=465>

in implementing EU-wide certification schemes and the measures that might need to be taken to maintain and sustain such schemes.

7 TRANSPOSITION OF LESSONS LEARNT

This section will transpose the lessons learnt from the analysis of the EU sectoral certification schemes, as well as the analysis of the EU certification research projects and studies, with a view to formulating best practices and identifying foreseeable difficulties relevant to creating and implementing an EU-wide privacy certification scheme. As required by the Tender, it will address the issue of whether the different sectoral models can be transposed to privacy seals taking into account the specificities of privacy and data protection.

First, we present a comprehensive listing of the essential elements or requirements of a successful EU-wide certification scheme (derived from analysis of the different sectoral schemes and the research projects). Then, we attempt to map the results of Task 1 against the results of Task 2 (i.e., findings on privacy seal schemes to findings on the EU sectoral schemes).

From our analysis of various EU certification schemes, projects and studies, we have identified the following:

A. Key challenges for EU certification evident from our analysis of schemes and projects;

- Gaps in underlying (technical or regulatory) framework
- Ensuring adequate support from Member States (and consequent lack of acceptance, technical barriers)
- High levels of national variations in implementation and enforcement - difficulty of ensuring consistency
- Resistance to and mistrust of scheme
- Fraudulent use of marks, logos (counterfeiting)
- Administrative burdens
- Competition and confusion with other logos
- Free riding
- Over protectionism
- Ambiguity and complexity of legislative requirements

B. Key requirements (for any effective EU standards or certification scheme)

- Valid and achievable scheme objectives, clear definition of scope
- Harmonised rules for implementation of the scheme and use of the mark/logo
- Additional legal rules to strengthen credibility of scheme and provide support
- Robust (yet adaptable) certification criteria
- Clear and uniform framework of standards and scheme criteria (also clear and unambiguous language)
- Key stakeholder confidence and support
- High quality, understandable, transparent, enforceable and globally accepted
- Standards/requirements must have a sound basis and meet needs
- Rigorous application of standards

- Co-operation between centralised entity controlling scheme and national bodies
- Adequate and meaningful monitoring and enforcement (including efficient market surveillance)
- Measures for regular review, improve and make innovations to the scheme
- Sustainability
- Dedicated body or bodies overseeing the scheme's design, implementation and innovation.

We next list the key success factors – i.e., factors that are not essential requirements for certification schemes but if incorporated into the design have the potential to make the scheme more effective and provide it with an advantage or edge over other schemes. These are found in differing combinations in the successful certification schemes. Not all of the analysed schemes have all of these factors, but they have contributed to the success of schemes that do feature them.

C. Key success factors

- Adaptability over sectors
- Adaptability over time/openness to new developments (to meet changing needs)
- Ability to foster free movement of products and services in EU internal market
- Acceptance beyond the EU
- Ability to meet expectations and needs (e.g., transparency, reliability) – actual delivery of benefit and provision of added value
- Clear examples of best practice
- Communication, public awareness of scheme and logo (recognition)
- Mandatory responsibility for certified entity
- Regulatory support
- Recognition and account of differing needs (needs of SMEs versus needs of larger organisations)
- Co-operation between centralised entity controlling scheme and national bodies
- Subscriber support and adherence to scheme
- Mutual recognition
- Support through market incentives
- Ability to sustain itself (and draw funding) (efficient mobilisation of resources)
- Transparency of scheme
- Low administrative burden
- Withdrawal of conflicting standards and schemes, or clear separation between new and existing schemes
- Recognition of compliance difficulties – some requirements are easier with which to comply than others.

We strongly recommend that an EU privacy seal scheme take into account the above findings. First, an EU privacy certification system must recognise the key challenges that it will face

listed earlier in this section under A (to this end, it can learn some lessons from how the analysed sectoral schemes have dealt with similar challenges). Second, an EU privacy certification scheme must embody the key requirements that are essential features of the other sectoral schemes listed earlier in this section under B. Finally, to be successful and set itself apart, the EU scheme will have to incorporate certain context-relevant factors that will help sustain and make it as successful – these are listed at C.

The analysis of EU certification schemes also raises a number of variables. Whilst not as unidirectional as the success factors listed above, the variables represent decisions that can be made regarding the nature of a scheme. A key decision is if a scheme should certify best practice with a field, relative to that field, or if a scheme should certify a standard. In the former model (as in the cases of the Eurolabel and PDO) some potential certified entities are excluded and certification is zero-sum. In the latter model, which is more common, any entity which meets the required standards can apply for certification. A second decision is the extent to which the scheme is public facing. Most existing privacy seals adopt a public facing model, in which the presence of the seal acts as an additional piece of information for a consumer or user to make a decision, generally to the benefit of the certified product or service provider. This requires a good public awareness of the scheme, and is suitable for voluntary models. In mandatory models, where participation in a certification scheme is required for entry into a particular industry sector (such as the IPPC), the need for public awareness is much lower. Mandatory models are therefore potentially more appropriate for the certification of “back-stage” processes that are generally not visible to the end-user (as in many industrial applications). Finally, a decision can be made regarding the scale at which the scheme operates. The IPPC scheme requires any industrial site operating in particular industries that have been pre-identified as particularly harmful to be certified, but does not require this of sites outside of those categories. A limited application might solely seek to certify entities in areas of privacy that could be identified as particularly harmful or likely to potentially infringe upon fundamental rights to privacy.

In our previous technical report, we conducted an analysis of currently operational privacy seal schemes.²⁷⁴ From this comparative analysis, we produced a description of a “typical” scheme, based upon the most common factors identified across these schemes. This typical scheme was relatively small, and gave relatively little formal privacy protection and guarantees, and was relatively non-transparent.²⁷⁵ Our comparative analysis of EU and USA-based seals found better adherence to formal data protection principles in European seals, and more concrete privacy guarantees. However, the European privacy seal schemes, including those with the most detailed protections, had small numbers of subscribers compared to commercial for-profit US seals based around a combination of security and privacy claims.

We can start to compare the success factors that we have identified in the first part of section 7 to this model of a typical privacy seal. This produces the following observations.

²⁷⁴ Rodrigues, Rowena, David Barnard-Wills, David Wright, Paul De Hert and Vagelis Papakonstantinou, *Inventory and Analysis of Privacy Certification Schemes: Final Report Study Deliverable 1.4*, Publications Office of the European Union, Luxembourg, 2013. <http://bookshop.europa.eu/en/eu-privacy-seals-project-pbLBNA26190/?CatalogCategoryID=CXoKABst5TsAAAEjpeY4e5L>

²⁷⁵ Ibid.

Administration and operation of the scheme

With regard to key requirements, the majority of schemes analysed in Task 1 globally are run by private organisations and have profit as an objective; whilst this is clear and achievable, other non-profit models of privacy seals are available, and these require a clearer statement of their objectives. The sectoral schemes analysed in Task 2 (this report) are divergent, with a range of different standards and requirements, and a very wide range of methods and procedures. Within the EU, privacy seal schemes are more likely to harmonise around EU privacy and data protection legislation. There are currently no additional rules or legislation that supports privacy seals within the EU (or in international treaties) but rather existing privacy seal schemes sit “atop” existing privacy and data protection law and signify compliance with this. This existing privacy and data protection law will, of course, change with the enactment of the GDPR.

Basis of the seal

In general, robust and transparent criteria with clear standards and workable enforcement are lacking in global privacy seals. The vast majority of privacy seal schemes have ambiguous, abstract or vague criteria, and make abstract promises about what is being protected, or what guarantees are being made to the end user. Schemes are often related to security, or commercial products, and there is little comparability or transferability between schemes. Within the EU, seals that aligned with data protection law have more specific, open, and therefore robust criteria. Support from industry for privacy seals in general is difficult to ascertain from this summary description; however, the take-up of privacy seals is generally low, and below market saturation. Certain industries (such as market research) have developed their own privacy seals (e.g., MRS Fair Data).²⁷⁶

Enforcement

The sectoral schemes analysed have fairly well developed enforcement mechanisms that have evolved with the schemes. Many have dedicated specific resources and have established entities for enforcement. For most privacy seals, enforcement is conducted primarily through removal of seals from certified entities that are found to be in violation of the terms, or potentially more frequently, that fail to pay their subscription fees. Enforcement activities are currently not generally capable of being externally monitored, with the exception being those EU schemes operated by data protection authorities which are more open due to these organisations’ broader commitment to institutional transparency.

Rather than integrated organisations with high levels of co-operation and co-ordination between them (as evident in the case of the sectoral schemes), the majority of privacy seals analysed are run by individual private organisations with little interrelation or mutual recognition between them. The comparative analysis of privacy seals did not find substantial evidence of measures for regular review and updates to the analysed schemes, but this may have been a result of the general lack of transparency. The analysis also did not identify substantive best practice guides from the various schemes (beyond the requirements or standards set for certification and use of privacy seals) in the manner of the best available techniques reference documents for the IPPC certification.

²⁷⁶ Market Research Society, Fair Data. <http://www.fairdata.org.uk/>

Attaining critical mass

Many of the sectoral certification schemes analysed are well established models displaying a critical mass in terms of sustainability. Sustainability is variable in relation to privacy seal schemes. Larger privacy seal schemes appear to be more sustainable than smaller schemes, and there is evidence that some seal schemes have died out.²⁷⁷ Some privacy seal schemes do have dedicated bodies operating and monitoring them, but these are in the minority. The larger privately operated seal schemes typically offer these services as part of a wider portfolio, including services such as product quality guarantees, company rating and review services, or information security products.

There is evidence of adaptability of sectoral schemes across sectors, and responsiveness to the variable needs of subscribers; however, in the case of privacy seals this is largely managed through abstract and vague certification standards that can encompass a wide range of entities (and arguably the field to which privacy seals may be applied is broader than the industrial or ecological sectors examined in this report). There is, however, evidence of market segmentation in privacy seals (with the development of specific seals for market research, children's websites and smart grids) and there may be some potential for mutual recognition between niche schemes. In relation to fostering the free market and the free transfer of goods and services, the non-transparent complaints processes may be a problem here, although EU located schemes are more likely to request complainants contact the scheme first, rather than the individual scheme member who may be located in a different Member States.

While many of the sectoral certification schemes such as the CE marking and the Common Criteria are globally recognised and used, there is little evidence for a significant take-up of or discussion on EU-based privacy seals outside of the EU. We have little information about how non-EU consumers or web users respond to the presence of EU-based privacy seals. The exception to the first limitation is the ESRB Safe Harbour scheme, which does take into account EU requirements for data processing.

Incentives and benefits

In relation to market incentives, all the privacy seal schemes analysed had their costs carried by the subscribers and certified entities. The seals (and their operators) compete with each other, although they are generally non-exclusive (a website might be certified by more than one privacy seal). Most of the commercially focused seals claim to offer economic benefit to certified entities (from signalling compliance with law or from encouraging increased interaction with the website and a greater number of transactions or users). Hosted seals (where the logo on a website is served and controlled by the certification authority) are a technological response to the challenge of fraud, counterfeiting and free-riding. It is also part of providing a technical framework for the operation of a scheme. None of the privacy seal schemes analysed in Task 1 make use of the opportunity for continual verification of privacy practices in a technically supported manner.

²⁷⁷ For example, as in the cases of i-Privacy (Australia) and PrivacyBot.

Recommendations to support existing privacy seals

In general, the key factors that would need to be improved to bring the typical privacy seal up to the level of best practices evidenced by some of the sectoral schemes analysed in this report would suggest:

- Developing a repository of best privacy practice in different online industries and types of websites (for example e-commerce, social networks, banking, media, advertising) and making this information available.
- Increasing the general transparency and specificity of the standards and requirements of the seal schemes. In particular the transparency of standards, and of enforcement practices.
- Improving the incentive structure to encourage wider up-take of the privacy seal scheme.
- Attempting to align the claims made for the seal schemes so that they can be compared against each other.
- Drawing strong links between competent entities involved in operating seal schemes.
- Increasing the relevance of an EU privacy certification scheme beyond the EU.

We recommend that these and the findings listed under key challenges, requirements and success factors be taken into account in the implementation of an EU privacy seal.

8 CONCLUSION

The identification and analysis of the various sectoral certification schemes in this report has helped us understand the background of these schemes, how they operate, their set-up, their relation to the legislative framework, the responsibility, accountability and sustainability elements of these schemes, the challenges they face, their criticisms, success factors, and best practices.

We briefly highlight the core findings in relation to each of the schemes:

Common Criteria: The success factors of the Common Criteria relate to co-operation and integration of activities of national authorities, the interest of vendors in investing in mutually recognised certifications of the security of IT products, commitment of participants in the Arrangement in promoting and developing it, peer to peer assessment process, commercial competitiveness, and costs savings due to mutual recognition. Its challenges and shortcomings mainly relate to the definition of the scope of the risks, the target of evaluation, the precise and absolute recognition of the levels of risk to which the products and systems are exposed to, and the understanding of the changing factors that may impact the actual security assessment.

CE marking: This scheme constitutes a useful example for EU privacy certification efforts. Although singular in design, it is applicable to multiple sectors; it is also a result of co-operation between industry and governments, achieving thus both global acknowledgement and subject-matter relevance at any given time. Other elements of success include: its ability to foster free movement of certified products within the EU, wide acceptance within and beyond the EU, and government support. The experience of the CE marking scheme shows the necessity of being able to put in place strong market surveillance to deal with counterfeiting, misuse or deception in relation to such schemes. It also shows the need for strong support from national authorities in implementing and enforcing the scheme. In addition, it shows the need (relevant for the success of any EU-wide certification scheme) for Member States to refrain from introducing competing certification schemes.

The EU Ecolabel scheme: Ecolabel bears the greatest resemblance to existing privacy seal schemes. An important element of the scheme is the certification requirement that Ecolabeled products have reduced ecological impact compared to other similar products on the market place. If this requirement is maintained over time, with the standard of ecological impact continuing to improve, this could have beneficial impacts across entire industrial sectors. An EU privacy certification scheme should be able to have such a similar impact - i.e., to be able to actually minimise privacy and data protection harms in a manner that will be beneficial to all segments of society. In this sense, Ecolabel is a policy instrument with a desired direction, rather than a measure for a better informed status quo.

Integrated pollution prevention and control (IPPC) certification: One of the key success factors of the IPPC scheme of great relevance for privacy seals is the concept of best available techniques (BAT) which are regularly updated in light of technological and industrial development. The ongoing development and revision of BAT keeps the scheme updated and relevant. In effect it introduces constantly developing improvements in the pollution standard, that at the same time are achievable by industry without excessive costs. On the negative side, the IPPC scheme demonstrates the variability that can be caused when a certification scheme is administered by a variety of competent authorities in different Member States.

Green Dot: Its success factors include the concept of mandatory producer responsibility, the enactment in legislation via a Directive, embodiment of a recognisable brand which has been broadly licensed rather than retained solely in one country, and significant amount of public information. Its challenges include: variation in practices between member countries, logo related confusion, and vulnerability to free-riding. The scheme is not addressed to any of the processes used to produce the packaging, but only to the eventual product, which can be assessed without the participation of the producing company, because it is available on the open market. This may limit some of the transferability between the Green Dot schema and privacy seals, as privacy invasive practices can be difficult to identify from outside an organisation.

International Financial Reporting Standards (IFRS): In Europe, the IFRS scheme is mandatory and therefore has had a strong impact upon the accounting industry in Europe. Since it is also a global standard it has relevance not only within the EU but globally. The scheme also seems to be continuously evolving. However, there still remain issues to be addressed as pointed out in the ACEP/MEDEF report; particularly in relation to European needs. The IFRS scheme seems to be one of the more open and transparent schemes in comparison to the other analysed schemes in relation to making explicit and easily available the details of its funding and sustainability.

Pan European Game Information (PEGI): The PEGI scheme is the dominant model of game certification in Europe and is widely recognised - therein lie its strengths. Four elements contribute to its success: scheme-related innovation; communication and awareness building efforts; its ability to rally large and small European retail games publishers; and lack of competition. However, PEGI has been criticised for its stringent standards and for inadequately addressing contextual sensitivities (a point we need to take into consideration in respect of privacy and data protection too).

Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) schemes: PDO and PGI are essentially exclusionary models of certification. If an application is successful then it prevents entry into that category for named foodstuff from external competitors. Certification is therefore a limited resource. The model has good European coverage due to its underlying Regulation, but there is some variability in inspection procedures. It is difficult to imagine how well a primarily geographical model such as this (with a very small number of characteristics to assess) would translate to a privacy seals scheme without artificial categories of certified entities, which would likely be mutual competitors.

Radio and Telecommunications Terminal Equipment Directive: The R&TTE Directive succeeded in creating an open and competitive market for the free movement and putting into service in the European Union (EU) of radio equipment and telecommunications terminal equipment. All Member States have transposed the Directive. Though the scheme has established its value, there are concerns in relation to it, which remain to be addressed such as limited traceability of products and manufacturers, ambiguity and complexity, administrative burden, lack of clarity on how to apply the Directive, varied legal requirements, difficulties in obtaining opinions from notified bodies in the absence of approved rules etc. An EU-wide privacy seals scheme would do well to address such issues as it was being developed and progresses.

In addition to the schemes, the analysis of key EU based projects and studies on certification helped us gain a comprehensive and richer insight into the success and failure factors impacting EU-wide certification schemes.

The Solar Keymark projects highlight the need for simple procedures, ability to gain acceptance (from Member States and others), and the need to continuously adapt to the needs of industry and technological developments.

The UNICE-BEUC e-Confidence project calls for: high standards, measurability, transparency, accessibility and visibility of marks, clear scope, content, procedures, adequate resources, adequate and meaningful monitoring, and technical security. The failure of this project highlights the need to have a robust, long-term business plan in place for the implementation of an EU-wide privacy seals scheme.

The EFTA Study on Certification and Marks in Europe highlights the importance of recognition, lack of competition (from similar schemes), strong industry and government support as well as its ability to add value (make the product or service a quality differentiator).

The Study ‘EU online Trustmarks: Building Digital Confidence in Europe’ in concluding that the best model for trust marks in Europe was to first develop a self-regulatory scheme and then convert it into an EC-backed accreditation scheme, reiterates the need for Commission initiative and backing by the industry.

Finally, the ‘Study on A Pan-European Trustmark for E-Commerce’, inter alia, highlights the need to ensure that any regulation enacted is fit for purpose and that the EU-wide scheme takes into account compliance challenges, legal implications, enforcement, sustainable funding and consumer awareness.

Comparing the challenges, requirements and key success factors developed from existing EU certification schemes with the characteristics of a typical existing privacy seal finds significant distance between the two models. European-based seals, especially those operated by Data Protection Agencies, have clearer standards and better transparency, but have had limited uptake. There are several measures (identified in section 7) that a privacy seal scheme could undertake to bring it into line with some of the best practices identified by the analysis of other sectoral certification schemes.

At this juncture, one must note an important difference between an EU privacy scheme and other EU certification schemes. The former does not have the luxury of time compared to others. All other certification schemes have had sufficient time to be developed, implemented in practice and even amended, in their first years of application. It could also be argued that the issues dealt with by these schemes are not of a pressing, immediate character. This is not the case with the intended EU-wide privacy seal scheme; once the General Data Protection Regulation comes into force, a privacy seals scheme might have to be introduced as soon as possible. Once introduced, it will have to cope with difficult privacy issues and personal data processing sectors (e.g., biometrics, smart metering) that attract public attention and have high impacts on society. If the scheme fails to meet expectations quickly, then it risks becoming marginalised, by lack of interest from its users, with significant implications for long term sustainability. This is why an adequate and effective transposition of the lessons learned in this task is crucial to its success.

The analysis of the sectoral certification schemes suggests that a EU privacy seal should be based on and supported by a **sound regulatory and technical framework**, obtain **adequate support from Member States**, find some way of co-ordinating and managing the variability of its application across Member States, establish **strong incentives** for organisations to join and use the scheme, be able to respond to counterfeiting, free riding and fraudulent use, **minimise its own administrative burdens** (whilst maintaining organisation co-ordination and coherence, potentially among a range of bodies and stakeholders), and **reducing competition and overlap with other similar schemes**.

Further, the EU privacy seals scheme must have **clarity and transparency**, with clear objectives and scopes, and clear rules of application. The seal must have a high-enough standard that it is meaningful. The scheme must be **adaptable to a range of contexts**, but must avoid uneven application in similar contexts. The scheme must have measures for keeping itself relevant and updating its standards, as best practices develop. The administration of the scheme should include an **element of competent market surveillance** in which the administering organisation(s) are able to understand the environment in which they are operating and are able to work with a range of stakeholders and interested parties.

Finally, the EU privacy seals scheme must be **clearly communicated to the public** and its users, so that its benefits are understood, and its mechanisms and processes can be clear and accessible as this is an important guarantee of the effectiveness of the scheme. Data subjects must be able to understand the privacy and data protection issues at stake; they must have easy access to understandable information on the criteria covered by the privacy seal scheme, and they must be aware of (i.e. recognise the privacy seal). The scheme should attempt to find a way to manage its position within the landscape of other privacy, security and e-commerce seals, and the competition it faces from such schemes, perhaps through some form of mutual recognition, federation or licensing. Based on the current study, there is a relatively strong argument for the importance of a robust legal framework underpinning such as scheme as a success factor.

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10 ANNEX – CERTIFICATION SCHEME PROFILES

This Annex contains the findings of the research on each of the individual certification schemes.

10.1 THE COMMON CRITERIA (ISO/IEC 15408)

Name of the scheme	Common Criteria for Information Technology Security Evaluation (Common Criteria or CC)
Nature and type of scheme	An international standard (ISO/IEC 15408) for computer security certification.
Country	The Common Criteria was developed jointly by the governments of the US, Canada, France, Germany, the Netherlands, and the UK.
Inception (date/year)	The CC's origins date back to 1983 when the US issued the Trusted Computer Security Evaluation Criteria (TCSEC), which became a standard in 1985. Criteria developments in Canada and European ITSEC countries followed the original US TCSEC work. The US Federal Criteria development was an early attempt to combine these other criteria with the TCSEC, and eventually led to the current pooling of resources towards production of the Common Criteria. Version 1.0 of the CC was published for comment in January 1996. Version 2.0 took account of extensive review and trials during the next two years and was published in May 1998. Version 2.0 was adopted by the International Organization for Standards (ISO) as an International Standard (ISO 15408) in 1999. The Common Criteria Recognition Arrangement (CCRA) dates back to May 2000.
Issuing organisation and type	<p>The partners in the CCRA are national governments. As in September 2013, 26 nations participate in the Arrangement. They may be producers of certificates, or consumers, or both. <i>Certificate consuming</i> participants are not entitled to maintain an IT security evaluation capability but are interested in certified/validated products and protection profiles. <i>Certificate authorising participants</i> sponsor compliant Certification Bodies (CB) and if they command the resources and expertise of a compliant CB are defined as <i>qualified participants</i>.</p> <p>Authorising participants: Australia, Canada, France, Germany, Italy, Japan, Malaysia, The Netherlands, New Zealand, Norway, Republic of Korea, Spain, Sweden, Turkey, United Kingdom and the United States. Consuming participants: Austria, Czech Republic, Denmark, Finland, Greece, Hungary, India, Israel, Pakistan and Singapore.</p>
Objective of the scheme	<p>The original purpose of the CC was to enable the certification of information technology products and systems, principally those sold by companies to governments, mainly for defence or intelligence use.</p> <p>According to the Common Criteria portal, the participants of the CCRA share the following objectives:</p> <ul style="list-style-type: none"> • To ensure that evaluations of IT products and protection profiles are performed to high and consistent standards and are seen to contribute significantly to confidence in the security of those products and profiles, • To improve the availability of evaluated, security-enhanced IT products and protection profiles, • To eliminate the burden of duplicating evaluations of IT products and protection profiles, and

	<ul style="list-style-type: none"> To continuously improve the efficiency and cost-effectiveness of the evaluation and certification/validation process for IT products and protection profiles.²⁷⁸ <p>The participants in the Arrangement recognise the CC certificates authorised by any other participant according to the terms of this Arrangement and the applicable laws and regulations of each participant.</p>
Brief description of the scheme	<p>The Common Criteria propose a grouping of 60 security functional requirements in 11 classes²⁷⁹. The grouping in classes allows a standard evaluation in order to define an Evaluation Assurance Level (EAL). The CC also define:</p> <ul style="list-style-type: none"> Packages, i.e., intermediate combinations of requirement components with a set of functional or assurance requirements that meet a sub-set of security objectives. Protection Profiles (PP), a set of implementation-independent set of security requirements for a class of Targets of Evaluation (TOEs) meeting specific consumer needs. Security Targets (ST), the document that identifies the security properties of the target of evaluation. Security Functional Requirements (SFRs), which specify individual security functions, that may be provided by a product. <p>Security Assurance Requirements (SARs) are the descriptions of the measures taken during development and evaluation of the product to assure compliance with the claimed security functionality.</p>
Target of scheme	<p>The target of Common Criteria certification and the Arrangement are industrial suppliers of IT products and systems, which in addition to their specific functionalities need to embed the assurance of specific security requirements.</p>
Beneficiaries of the scheme	<p>The different beneficiaries of the scheme include:</p> <ul style="list-style-type: none"> National governments committed to produce and update IT security assurance criteria and to enter arrangements for the mutual recognition of the certification processes and related security levels; Public and private procurers of IT products and services, specifically those involved in defence and national security; National bodies involved in IT product and systems security assurance and in IT security criteria development, implementation and assurance. The IT products and systems industry.
Regulatory/compliance framework underlying the scheme	<ul style="list-style-type: none"> The Common Criteria The related ISO/IEC 15408 Standard The Common Criteria Recognition Arrangement (CCRA) The supporting documentation for specific assurance procedures. Updates related to the Common Criteria development.
Was a single regulation (act) sufficient or is there a	No.

²⁷⁸ Common Criteria, "About the Common Criteria". <http://www.commoncriteriaportal.org/ccra/>

²⁷⁹ Mead, Nancy, "The Common Criteria", *Build Security In*, Department of Homeland Security, 10 Aug 2006. <https://buildsecurityin.us-cert.gov/articles/best-practices/requirements-engineering/the-common-criteria>

requirement for the introduction of additional administrative measures?	
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	No.
What mechanism or entity controls the scheme at EU level?	No controlling role, just a support role; the EU played an important role in the integration of the national schemes and in the preparatory phase of the Common Criteria and their application scheme. At present, the scheme is managed by the countries participating in the CCRA and fully self-regulated. The main decision making body is the CCRA management committee.
What is the level of integration among Member States achieved in the field?	The level of integration is high, as a result of the Arrangement. However, coverage is not yet universal.
What are the requirements of implementation at Member State level?	The Common Criteria and the Arrangement establish and regulate most aspects of the scheme, including its management. The process is fundamentally based on a peer-to-peer operation of the certification and monitoring. Participating countries need to have established a national operating scheme for the CC and ISO/IEC 15408.
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	Not found.
How many entities were certified in 2012? How many have been certified so far in 2013?	<p>It necessary to first clarify the concept of “certification”. The application of Common Criteria requires different types of assessment, verification and validation:</p> <ol style="list-style-type: none"> 1) The participating countries in the Arrangement are certified and are subject to regular voluntary reviews; 2) The national certification bodies are accepted and supervised by the national security authorities. The CC Arrangement does not directly affect the national level of security assurance; 3) The IT products and services are certified by national certification bodies according to national certification criteria. <p>The following list shows the number of certified entities per product type:</p> <ul style="list-style-type: none"> • Access control devices and systems: 79 certified products • Biometric systems and devices: 3 certified products • Boundary protection devices and systems: 110 certified products • Data protection: 76 certified products • Databases: 45 certified products • Detection devices and systems: 45 certified products • Integrated circuits, smart cards, smart card-related devices and systems: 680 certified products • Key management systems: 36 certified products • Multi-function devices: 190 certified products

	<ul style="list-style-type: none"> • Network and network-related devices and systems: 167 certified products • Operating systems: 102 certified products • Other devices and systems: 197 certified products • Products for digital signatures: 76 certified products • Trusted computing: three certified products
What are the conditions for award of certification?	<p>Article 9 of the CCRA states that participation in the CCRA is open to representatives from countries that plan to uphold the principles of the Arrangement, subject to the unanimous consent of the existing participants. National certification/validation bodies may be considered compliant upon unanimous consent of existing participants who need to be confident that the bodies:</p> <ul style="list-style-type: none"> • can fulfil the conditions laid out in Article 5 of the Arrangement, • satisfy the conditions for compliance laid down in Annex G of the Arrangement, including shadow certification/validation.
What is the certification process?	<p>There are two relevant certification processes:</p> <ol style="list-style-type: none"> 1) Shadow certification/validation: Assessment of a CB in which representatives of at least one qualified participant monitor the evaluation and certification/validation of an IT product in accordance with this Arrangement. 2) Voluntary periodic assessments: refer to the verification of compliant CBs. Here, a shadow certification is carried out as well. These should take place at intervals of approximately 5 years, but must not exceed this timeframe and have the purpose of assuring that the CB continues to share the objectives of the Arrangement. The form of the voluntary assessments is set out in Annex D of the Arrangement.
What are the costs related to the scheme?	Not clearly determinable.
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	Article 16 of the CCRA speaks of voluntary termination of participation. Any participant may terminate its participation in the Arrangement, or terminate the compliant status of any CB that it represents, by notifying the other participants in writing.
Describe the mechanism for receiving and responding to complaints.	Article 11 of the CCRA deals with disagreements. It states that disagreements between participants should be resolved through discussions, and that participants should resolve disagreements between themselves by negotiation. Failing this, disagreements should in the first instance, be referred to the Management Committee. The Management Committee is expected to document its findings in the disagreement. If the disagreement cannot be resolved by discussion or negotiation, individual participants may choose not to recognise affected Common Criteria certificates and notify the Management Committee of such non-recognition. Further, Article 18 of the CCRA provides all participants must recognise that the Arrangement has no binding effect in national, international or European Community law on any or all of them, and that they will not attempt to enforce the Arrangement in any domestic or international court or tribunal.
For how long is the certification valid?	The CC Arrangement came into force in 2000. New participants can be added to the Arrangement. The certification as such does not expire; it is monitored maintained by voluntary assessments at regular

	intervals. The participants are custodians of the certification, which is rooted in the national certification of products, according to the Common Criteria. The withdrawal of certification takes place at national level and then communicated at the CC Arrangement level, therefore, the validity period of the certification follows the validity of the national level certifications.
In which Member States is the certification scheme valid and supported?	The following countries are CCRA members: Australia, Austria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, India, Israel, Italy, Japan, Malaysia, Netherlands, New Zealand, Norway, Pakistan, Republic of Korea, Singapore, Spain, Sweden, Turkey, UK, and the United States.
If applicable, how frequently have updates been made to the certification scheme?	Constant updates on a cooperative basis is one of the objectives of the Arrangement. The process may start informally, can be formalised and subsequently taken up.
What are the scheme's key success factors?	The key success factors of the CC scheme is the co-operation and integration of activities of national authorities and the interest of vendors in investing in mutually recognised certification for the security of IT products. Another success factor is the commitment of participants in the Arrangement in promoting and developing the scheme.
Identify the criticisms, failures, concerns and challenges to the scheme.	<p>The main criticisms towards the Common Criteria, not the Arrangement, are:</p> <ul style="list-style-type: none"> • If a product is certified it does not necessarily mean that it is completely secure. This is possible because the process of obtaining a CC certificate allows the producer to restrict the analysis to certain security features and to make certain assumptions about the operating environment and the strength of threats; • The CC recognises a need to limit the scope of evaluation in order to provide cost-effective and useful security certifications. Evaluations activities are therefore only performed to a certain level. • The TOE are applicable to networked or distributed environments only if the entire network operates under the same constraints and resides within a single management domain. • There are no security requirements that address the need to trust external systems or the communications links to such systems. • The Common Criteria is expensive: with enterprise security management, the vendor usually rewrites their own custom security target or the product requirements documents that are based on the security target.²⁸⁰ • In the implementation of the Common Criteria in enterprise security management, IT security professionals found that such criteria is hard to compare with, since each product has its own security target document.²⁸¹ <p>The benefits of using the Criteria are that they allow customers to</p>

²⁸⁰ Mead, 2006.

²⁸¹ Brickman, Joshua, "Common Criteria – a good concept in transformation", Security Management Blog, 25 March 2010. <http://community.ca.com/blogs/iam/archive/2010/03/25/common-criteria-a-good-concept-in-transformation.aspx>

	make informed security decisions in several ways. Eric Bidstrup, the Group Program Manager (Windows Server) at Microsoft suggests that the Common Criteria (CC) have failed to gain the popularity required, and broad acceptance among private sectors or any organisations beyond government agencies. ²⁸²
Other relevant issues	<p>The Common Criteria Arrangement seems to work quite well. There is a strong commitment from participants and a significant number of certified products and systems. However, there are still certain issues related to the CC deployment:</p> <ol style="list-style-type: none"> 1) The difficulty of properly understanding the real value of the certification levels, which are not only explained through the description of the levels, but also through the systemic assessment of the product evaluation in the context in which it is used and integrated; 2) The strong commercial interests of product vendors in obtaining the certification; 3) The ‘flexibility’ of the target of evaluation, which can be designed as appropriate in the definition of the potential threats to the product. Since the use of IT products is very dynamic, it might be necessary to carefully assess the perimeter of the target of evaluation.
Evaluation of overall impact	<p>The actual impact of the use of CC and the benefits of the CC agreement are clear and straightforward in theory. Advantages include:</p> <ul style="list-style-type: none"> • Commercial competitiveness • Cost savings (from mutual recognition) • Support for IT procurement, specifically, public procurement of systems • Availability of IT products and systems with a certain level of security (despite needing a complex comprehension and specific knowledge and expertise).
Website	http://www.commoncriteriaportal.org/

²⁸² Bidstrup, Eric, “Common Criteria and Answering the Question ‘Is it Safe’”, Security Development Lifecycle Blog, 20 Dec 2007. <http://blogs.msdn.com/b/sdl/archive/2007/12/20/common-criteria-and-answering-the-question-is-it-safe.aspx>

10.2 CE MARKING SCHEME

Category	CE marking scheme
Nature and type of scheme	General product multi-sector compliance certification. Mandatory legal mark/self-certification scheme.
Country	European Union.
Inception (date/year)	1993
Issuing organisation and type	European Commission.
Objective of the scheme	To indicate that a product conforms to all applicable Community provisions, and to demonstrate that the appropriate conformity assessment procedures have been completed.
Brief description of the scheme	<p>The CE marking indicates a product's compliance with EU legislation and enables the free movement of products within the European market. By affixing the CE marking to a product, a manufacturer declares, on his sole responsibility, that the product meets all the legal requirements for the CE marking, which means that the product can be sold throughout the European Economic Area (EEA), the 28 Member States of the EU and European Free Trade Association (EFTA) countries (Iceland, Norway, Liechtenstein). This also applies to products made in other countries, which are sold in the EEA. However, not all products must bear the CE marking, only product categories mentioned in specific EU directives on the CE marking.</p> <p>The CE marking does not indicate that a product was made in the EEA, but merely states that the product has been assessed before being placed on the market and thus satisfies the applicable legislative requirements (e.g., a harmonised level of safety) enabling it to be sold there. It means that the manufacturer has:</p> <ul style="list-style-type: none"> • verified that the product complies with all relevant essential requirements (e.g., health and safety or environmental requirements) laid down in the applicable directive (s), and • if stipulated in the directive (s), had it examined by an independent conformity assessment body. <p>It is the manufacturer's responsibility to carry out the conformity assessment, to set up the technical file, to issue the declaration of conformity and to affix the CE marking to a product. Distributors must check that the product bears the CE marking and that the requisite supporting documentation is in order. If the product is being imported from outside the EEA, the importer has to verify that the manufacturer has undertaken the necessary steps and that the documentation is available upon request. With the adoption of Regulation 765/2008 and Decision 768/2008, the obligations of the manufacturer are spelled out and it is clear that by affixing the CE marking to a product, the manufacturer assumes full responsibility for its compliance with all the applicable requirements in EU legislation.</p>
Target of the scheme	Product manufacturers, importers, distributors (certification is restricted to product categories mentioned in specific EU Directives)
Beneficiaries of the scheme	Product consumers, importers and distributors.
Regulatory/compliance framework underlying the scheme	Decision 93/465/EEC harmonises the rules for affixing and use of the CE marking. The New Approach Directives (directives providing for the CE marking) and other specific European Directives, as

	implemented by national legislation. ²⁸³
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	Specific legislation applies to the different product groups. The New Legislative Framework, which modernises the New Approach, put in place additional legal measures to strengthen the role and credibility of the CE marking. ²⁸⁴
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	If the legislation applying to the product requires it, a notified body is involved in the assessment of the conformity of the product. For the list of the notified bodies, please see http://ec.europa.eu/enterprise/newapproach/nando/ . Only listed bodies are allowed to be involved in the conformity assessment procedure. Member States are responsible for 'notifying' these bodies to the EU.
What mechanism or entity controls the scheme at EU level?	The supervision and enforcement of the CE marking is the responsibility of national public authorities in the EU Member States in co-operation with the European Commission. ²⁸⁵
What level of integration have Member States achieved in the field?	The CE Marking is valid in all EU/EFTA Member States.
What are the requirements for implementation of the scheme at Member State level?	Member States are obliged to take appropriate measures to protect the CE marking. Member States are obliged: <ol style="list-style-type: none"> 1. not to prohibit, restrict or impede the placing on the market and putting into service of products that comply with the applicable New Approach directives; and 2. to take any measures necessary to ensure that products are placed on the market and put into service only if they do not endanger the safety and health of persons, or other interests covered by the applicable directives, when correctly constructed, installed, maintained, and used in accordance with their purpose.²⁸⁶ <p>The CE marking is the only marking which symbolises conformity to all the obligations incumbent on manufacturers for the product as required by the applicable Directives providing for its affixing. Member States must refrain from introducing any reference to another conformity marking into their national regulations, which would signify conformity with objectives that relate to the CE marking.²⁸⁷</p>
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	Not found.

²⁸³ See list on page 12 of the Blue Guide. European Commission, *Guide to the Implementation of Directives based on the New Approach and the Global Approach (Blue Guide)*, Office for Official Publications of the European Communities, 2000. http://ec.europa.eu/enterprise/policies/single-market-goods/files/blue-guide/guidepublic_en.pdf

²⁸⁴ http://ec.europa.eu/enterprise/policies/european-standards/harmonised-standards/new-legislative-framework-and-emas/index_en.htm

²⁸⁵ http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/market-surveillance/index_en.htm

²⁸⁶ European Commission, *Guide to the Implementation of Directives based on the New Approach and the Global Approach*, Office for Official Publications of the European Communities, 2000. (**Blue Guide**). http://ec.europa.eu/enterprise/policies/single-market-goods/files/blue-guide/guidepublic_en.pdf

²⁸⁷ Ibid.

How many entities were certified in 2012? How many have been certified so far in 2013?	The European Commission does not keep a registry of the CE marked products. (Confirmed by email dated 19 August 2013 from DG-ENTR).
What are the conditions for award of certification?	The product must comply with the essential requirements of the relevant EU legislation.
What is the certification process?	The process is as follows: <ul style="list-style-type: none"> • Identify the directive(s) and harmonised standards applicable to the product. • Verify the product-specific requirements. • Identify whether an independent conformity assessment is required from a Notified body. • Test the product and check its conformity. • Draw up and keep available the required technical documentation. • Affix the CE marking to product and EC Declaration of Conformity.
What are the costs related to the scheme?	Costs vary depending on the product. The European Commission does not have a cost estimation (confirmed by email dated 19 August 2013 from DG-ENTR).
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	Market surveillance authorities in each Member State take actions to prevent the misuse of the marking based on their laws and practices. They are responsible for sanctioning infringements and bringing (if relevant) cases to the courts. ²⁸⁸ The grounds of revocation include: non-conformance of product to relevant requirements. A continuous breach of a Directive's requirements might lead to restriction or forbidding a product from entering the EU or its withdrawal from the market.
Describe the mechanism for receiving and responding to complaints.	The EC website suggests consumers "report a safety problem with a product to the manufacturer or the retailer from whom you bought it. In addition, contact the appropriate public authority as this ensures that further steps to ensure the safety of the product will be taken". ²⁸⁹
For how long is the certification valid?	Not stated.
In which Member States is the certification scheme valid and supported?	European Economic Area (EEA, the 28 Member States of the EU and European Free Trade Association (EFTA) countries Iceland, Norway, Liechtenstein).
If applicable, how frequently have updates been made to the certification scheme?	The principles of the CE Marking are defined under Regulation 765/2008 and Decision 768/2008 and have not been changed since then (confirmed by email dated 19 August 2013 from DG-ENTR).
What are the scheme's key success factors?	These include: <ul style="list-style-type: none"> • The scheme's ability to facilitate the free movement of certified product within the EU. • Wide acceptance within and out with the EU (there are numerous 'Agreements on Mutual Recognition of Conformity Assessment' between the European Union and other countries such as the USA, Japan, Canada, Australia, New Zealand and Israel. Consequently, the CE marking is now found on many

²⁸⁸ See http://ec.europa.eu/enterprise/policies/single-market-goods/internal-market-for-products/market-surveillance/index_en.htm

²⁸⁹ European Commission, "Additional information". http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/facts/consumers/index_en.htm

	<p>products from these countries). Switzerland and Turkey (which are not members of the EEA) also require products to bear the CE marking as an affirmation of conformity.</p> <ul style="list-style-type: none"> • Support from government and industry (Many manufacturers consider the CE marking as sufficient for the Internal Market).²⁹⁰
Identify the criticisms, failures, concerns and challenges to the scheme.	<p>One criticism relates to the finding that professional buyers sometimes mistrust the CE marking, particularly when it is only based on a Supplier's Declaration of Conformity.²⁹¹</p> <p>Some stakeholders lack confidence in the CE marking (manifest implicitly in the demand from the distribution channels for marking of higher risk products).²⁹²</p> <p>The lack of efficient market surveillance on the Internal Market is undermining confidence in the CE marking, since non-compliant products might have CE marking and yet be able to circulate freely in the Internal Market, even if they are not safe.²⁹³</p> <p>National approval schemes for thermal insulation continue to have sovereignty over the CE marking in some European countries; Non-acceptance of the CE marking is particularly strong in Germany where there appear to be technical barriers related to product approval national technical barriers to acceptance - i.e., the marking is not considered enough to provide evidence of passing more stringent national requirements.²⁹⁴</p> <p>Unfortunately, due to counterfeiting or misuse of the marking, there is never a 100 per cent guarantee that a product bearing the CE marking is safe.</p> <p>A report suggests that "Chinese manufacturers were submitting well-engineered electrical products to obtain conformity testing reports, but then removing non-essential components in production to reduce costs".²⁹⁵ A test of 27 electrical chargers found that all the eight legitimately branded with a reputable name met safety standards, but none of those unbranded or with minor names did, despite bearing the CE marking; non-compliant devices were actually potentially unreliable and dangerous, presenting electrical and fire hazards.²⁹⁶</p>
Other relevant issues	-
Evaluation of overall impact	The CE marking scheme is a relatively successful long standing and widely accepted scheme. The main concern relates to how it still fails to prevent counterfeiting.
Website	http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/

²⁹⁰ Consumer Research Associates Ltd, *Certification and Marks in Europe: A Study commissioned by EFTA* (EFTA Study), Brussels, January 2008.

<http://www.efta.int/~media/Files/Publications/Study%20Certification%20Marks/full-report.ashx>

²⁹¹ EFTA Study, 2008.

²⁹² EFTA Study, 2008.

²⁹³ EFTA Study, 2008.

²⁹⁴ EFTA Study, 2008.

²⁹⁵ Buckinghamshire Trading Standards, *What's in your socket?* Sept. 2008.

http://www.buckscc.gov.uk/media/137366/60600_Booklet_proof.pdf

²⁹⁶ Ibid.

10.3 THE EU ECOLABEL SCHEME

Category	EU Ecolabel
Nature and type of scheme	The EU Ecolabel is a voluntary scheme, which means that producers, importers and retailers can choose to apply for the label for their products (consumer protection, environment).
Country	France (with competent bodies in Member States). ²⁹⁷
Inception (date/year)	The EU Ecolabel was launched in 1992 when the European Community decided to develop a Europe-wide voluntary environmental scheme that consumers could trust. Since then, the products and services awarded the EU Ecolabel has increased every year. A licence gives a company the right to use the EU Ecolabel logo for a specific product group.
Issuing organisation and type	<p>The European Union Ecolabelling Board (EUEB) is composed of the representatives of the Competent Bodies of the European Union, the Competent Bodies of Iceland, Liechtenstein and Norway and the representatives of the following organisations:</p> <ul style="list-style-type: none"> • European Environmental Bureau (EEB) • Bureau Européen des Consommateurs (BEUC) • European Confederation of Associations of Small and Medium-sized Enterprises (CEA-PME) • Business Europe • EUROCOOP • European Association of Craft, Small & Medium-Sized Enterprises (UEAPME) • EuroCommerce. <p>The EUEB contributes to the development and revision of EU Ecolabel criteria and to any review of the implementation of the EU Ecolabel scheme. It also provides the Commission with advice and assistance in these areas and, in particular, issues recommendations on minimum environmental performance requirements.</p> <p>The European Commission manages the scheme at the EU level to ensure that the Ecolabel Regulation is implemented correctly. Even if the development or revision of EU Ecolabel criteria can be initiated and led by parties other than the European Commission (States, Competent Bodies and other stakeholders), the Commission is responsible for preparing the final draft of the criteria documents that have to take into account the comments from the EUEB. The Commission adopts EU Ecolabel criteria for each product group as ‘Commission Decisions’ after the Ecolabel Regulatory Committee supports the criteria by a qualified majority.</p> <p>Competent Bodies are independent and impartial organisations designated by Member States of the European Economic Area from within government ministries or outside the ministries. They are responsible for implementing the EU Ecolabel scheme at the national level and are the first point of contact for any questions from applicants. They specifically assess applications and award the EU Ecolabel to products that meet the set criteria. As such, they are responsible for ensuring that the verification process is carried out in a consistent, neutral and reliable manner by a party independent from the operator being verified, based on international, European or national</p>

²⁹⁷ European Commission, “Ecolabel: Competent Bodies”. <http://ec.europa.eu/environment/ecolabel/competent-bodies.html>

	standards and procedures concerning bodies operating product certification schemes. The Competent Bodies meet three times a year at the Competent Body Forum in Brussels to exchange experiences and ensure a consistent implementation of the scheme in different countries.
Objective of the scheme	<ul style="list-style-type: none"> • To promote products with a reduced environmental impact during their entire life cycle and to provide consumers with accurate, non-deceptive, science-based information on the environmental impact of products. • To avoid the proliferation of environmental labelling schemes and to encourage higher environmental performance in all sectors for which environmental impact is a factor in consumer choice.
Brief description of the scheme	<p>According to its website, “an Ecolabel is a voluntary environmental performance certificate that is awarded to products and services”.²⁹⁸ These products and services have to meet specific, identified criteria depending on the product groups, which reduce overall environmental impact. The EU Ecolabel fits the International Organization for Standardization (ISO) definition for a Type 1 Ecolabel.²⁹⁹ This means the EU Ecolabel is voluntary, based on multiple criteria, where a third party awards the use of the label to indicate overall environmental preferability within a particular product category based on life cycle assessment.</p> <p>The EU Ecolabel scheme promotes the production and consumption of products that have a reduced environmental impact in comparison to existing products on the market. Because the scheme works at the European level, its scope goes beyond the pre-existing national ecolabels that are often only well-known within national borders.</p> <p>The EU Ecolabel aims to guarantee a high level of transparency, reliability and scientific credibility, which meets customers’ green demands. Unlike other environmental information or labelling, no technical understanding is required to read and understand the label.</p> <p>The EU Ecolabel logo is used for all the different product groups. This makes it easier to recognise quality products with better environmental performance that protect the interests of consumers, producers and the environment.</p>
Target of the scheme	<p>Every product and service placed on the market in the European Economic Area (European Union plus Iceland, Lichtenstein and Norway) that meets the EU Ecolabel criteria set for that product or service category can be awarded the EU Ecolabel. Criteria are currently established for a wide range of non-food and non-medical product groups, including detergents, paper towel rolls, laptops, clothing and tourist accommodation services.</p> <p>Producers, manufacturers, importers, service providers and wholesalers placing their products and/or services on the European Economic Area market can all apply for the EU Ecolabel. Retailers can also apply for products placed on the market under their own brand name.</p>
Beneficiaries of the scheme	These include: consumers and producers of environmentally friendly

²⁹⁸ <http://ec.europa.eu/environment/ecolabel/>

²⁹⁹ Ibid.

	products.
Regulatory/compliance framework underlying the scheme	Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel. ³⁰⁰ European Commission Regulation amending Annex III to Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel, 2013. (<i>increase in fees</i>)
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	The scheme was set up in 1992 by Council Regulation (EEC) No 880/92 of 23 March 1992 on a Community eco-label award scheme. ³⁰¹ The scheme was revised in 2000 (vide Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme. ³⁰² The EU Ecolabel Regulation 66/2010 sets the legal framework, while Commission Decisions establish the requirements that the products have to meet in order to be awarded with the EU Ecolabel. The Commission Decision 2012/481/EC ³⁰³ of 16 August 2012 gives the official details of requirements, field of application, definitions, criteria, certification and proof procedures, etc. However, Article 17 of Regulation 66/2010 states that “Member States shall lay down the rules on penalties applicable to infringements of the provisions of the Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission without delay and shall notify it without delay of any subsequent amendment affecting them”. ³⁰⁴
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	Regulation 66/2010 called for establishment of the European Union Ecolabelling Board (EUEB) consisting of the representatives of the competent bodies of all the Member States, and of other interested parties. The Board contributes to the development and revision of EU Ecolabel criteria and to any review of the implementation of the EU Ecolabel scheme. It provides the Commission with advice and assistance in these areas and, in particular, issues recommendations on minimum environmental performance requirements. The Board must observe a balanced participation of all relevant interested parties in respect of each product group, such as competent bodies, producers, manufacturers, importers, service providers, wholesalers, retailers, notably SMEs, and environmental protection groups and consumer organisations.
What mechanism or entity controls the scheme at EU level?	The European Commission manages the scheme at the EU level to ensure that the Ecolabel Regulation is implemented correctly. Even though the development or revision of EU Ecolabel criteria can be initiated and led by parties other than the European Commission (States, Competent Bodies and other stakeholders), the Commission is responsible for preparing the final draft of the criteria documents that have to take into account the comments from the EUEB.
What level of integration have Member States achieved in the field?	The scheme is recognised throughout the European Union, Norway, Liechtenstein and Iceland. Highly qualified and independent Competent Bodies have been

³⁰⁰ OJ L 27, 30 Jan 2010, p.1-19.

³⁰¹ OJ L 99, 11 April 1992.

³⁰² OJ L 237, 21 Sept 2000.

³⁰³ European Commission, Decision of 16 August 2012 establishing the ecological criteria for the award of the EU Ecolabel for printed paper, OJ L 223, 21 Aug 2012, p.55.

³⁰⁴ OJ L 27, 30 Jan 2010, p.1-19.

	appointed in each EU Member State to administer the certification at national level.
What are the requirements for implementation of the scheme at Member State level?	Each state of the European Economic Area designates a Competent Body, an independent and impartial organisation that implements the EU Ecolabel scheme at national level. Competent bodies play a central role in the work of the EU Ecolabel scheme and are the first point of contact for applicants. They specifically assess applications and award the EU Ecolabel to products that meet the criteria set for them. As such, they are responsible for ensuring that the verification process is carried out in a consistent, neutral and reliable manner by a party independent from the operator being verified, based on international, European or national standards and procedures concerning bodies operating product-certification schemes.
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	Not evident in respect of the regulatory framework. FERN (a non-governmental organisation and a Dutch Stichting created in 1995 to keep track of the European Union's involvement in forests and coordinate NGO activities at the European level) issued a report titled 'EU Ecolabel allows forest destruction - The case of Pindo Deli' on 9 April 2010 ³⁰⁵ following which the European Commission asked AFNOR, the French EU Ecolabel Competent Body, to carry out an in-depth investigation to verify Pindo Deli's compliance with the Ecolabel criteria. This investigation was requested as the Commission was very concerned that the situation that could have been potentially very damaging for image of the EU Ecolabel. The AFNOR audit concluded that "Corrective actions were required for items to be corrected which have been supplied for review, and which will also be reviewed during the next audit (October 2011). The items to be corrected do not call into question the legality of the fiber source and the sustainable forest management". ³⁰⁶
How many entities were certified in 2012? How many have been certified so far in 2013?	By the end of 2011, more than 1,300 licences had been awarded, and as of 2013, the EU Ecolabel can be found on more than 17,000 products.
What are the conditions for award of certification?	Because the life cycle of every product and service is different, the Ecolabel criteria are tailored to address the unique characteristics of each product type.
What is the certification process?	The steps in the certification process are as follows: <ul style="list-style-type: none"> • Check whether product is eligible and if the company can apply. • Contact the Competent Body responsible for evaluating the application and awarding the EU Ecolabel. The Competent Body will provide applicant with assistance throughout the application process. It also awards the EU Ecolabel and may help market products. • Apply using the online application tool, Ecat_admin. • In order to prove compliance to the criteria for the applicant's product group, the applicant has to provide a dossier made up

³⁰⁵ Land, Chris, "EU Ecolabel allows forest destruction: The case of Pindo Deli", FERN, 9 April 2010. http://www.fern.org/sites/fern.org/files/FERN_PindoDeli-final_0.pdf

³⁰⁶ AFNOR, "Conclusions from AFNOR Certification following APP audit reports for the EU Ecolabel 'Copying and graphic paper'", Memo, 16 Sept 2011. <http://ec.europa.eu/environment/ecolabel/news/archives/pinto.pdf>

	<p>of declarations, documents, data sheets and test results. The applicant must meet the costs of testing and assessment of conformity with the EU Ecolabel criteria. The test laboratory should be preferably accredited under ISO 17025 or equivalent. The applicant must submit all the required information about the laboratory to the Competent Body, which must approve the laboratory.</p> <ul style="list-style-type: none"> • Once the applicant has submitted the online application, they need to submit the required paper file to their Competent Body. Within two months of receipt of an application, the Competent Body assesses the product against the criteria set for it. If documentation is missing, the applicant is informed and needs to provide additional information. The Competent Body may also organise a visit or audit to the applicant's manufacturing facility. • Complete the application and wait for the assessment. The application must be submitted online and the complete dossier sent by post to the relevant Competent Body to be assessed. The Competent Body provides applicants with specific information on the application, as well as details on annual fees. • Sign the contract. If the product meets the requirements, applicant needs to sign the contract for the product to be awarded the EU Ecolabel.
What are the costs related to the scheme?	<p>The EU Ecolabel is designed to be as low cost as possible for businesses interested in the scheme. As the costs of running the scheme vary slightly between Competent Bodies and from one product to another, fees vary accordingly. Reduced fees are available for SMEs, micro-enterprises and companies from developing countries. A 20% reduction is foreseen for companies registered under the EU Eco-Management and Audit Scheme (EMAS) or certified under ISO 14001. For micro-enterprises, a one off application fee costs between €200-350, annual fees are maximum of €350. For SMEs and firms from developing countries, the one-off application fee costs between €200-600 and annual fees are capped at €750. All other companies pay around €200-€1200 as one off application fees, and the annual fees are capped at €1500. [Note, the fees are being revised in 2013.]</p>
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	<p>On investigation of a complaint, if the product/service is found to be non-compliant, the Competent Body informs the licence holder of suspension of the licence for the specific product/service. The licence holder is given a three-month period to prove the product/service's compliance with the Ecolabel criteria. During this period, the use of the logo is not permitted. If compliance cannot be proven, the Competent Body, withdraws the licence and informs the European Commission of the non-compliance.</p>
Describe the mechanism for receiving and responding to complaints.	<p>Article 10 of Regulation 66/2010 gives the responsibility for market surveillance and control of the use of the Ecolabel to the Competent Bodies, who undertake verifications upon complaints about false or misleading advertising or use of any label or logo which leads to confusion about the label.</p> <p>The Competent Body which has awarded the EU Ecolabel to the product informs the EU Ecolabel holder of any complaints made concerning the product bearing the EU Ecolabel, and may request the holder to reply to those complaints. The Competent Body may</p>

	<p>withhold the identity of the complainant from the holder.</p> <p>The Ecolabel website has a ‘Non-compliance with EU Ecolabel criteria complaint form’ which can be sent to the EU Ecolabel Helpdesk by email or post.³⁰⁷</p>
For how long is the certification valid?	The product group criteria are usually valid for a period of three to five years, depending on the Commission Decision for each product group. ³⁰⁸ This allows the criteria to reflect technical innovation, such as evolution of materials or production processes, and emission reductions and changes in the market. The ecological criteria are reviewed prior to their expiration and may be revised. If criteria are revised, licence holders need to renew their contract. However, if criteria are extended, their contract is automatically renewed as long as the criteria remain valid for a product. Holders may use the EU Ecolabel starting from the date it is awarded until the end of the period of the validity of the criteria.
In which Member States is the certification scheme valid and supported?	EU Ecolabelled products can be sold and marketed in any of the EEA states (EU Member States plus Iceland, Liechtenstein and Norway).
If applicable, how frequently have updates been made to the certification scheme?	Following consultation with the EUEB, the Commission, Member States, Competent Bodies and other stakeholders may initiate and lead the development or revision of EU Ecolabel criteria. Every four years on average, the criteria are revised to reflect technical innovation such as evolution of materials or production processes, as well as factors such as emission reduction and changes in the market.
What are the scheme’s key success factors?	<ul style="list-style-type: none"> • By the end of 2011, more than 1,300 licences had been awarded, and today, the EU Ecolabel can be found on more than 17,000 products. • It covers a large range of products and services, all non-food and non-medical. • It is recognised across Europe • The application process is simple, and can be done online. • There are special discounts for SMEs, micro-enterprises and applicants from developing economies • Though not industry-led, it incorporates the involvement of wide range of stakeholders (e.g., as members of the EUEB).
Identify the criticisms, failures, concerns and challenges to the scheme.	There are some industry criticisms of the scheme. ³⁰⁹
Other relevant issues	There have been some efforts to link Ecolabel and Green Public Procurement (GPP).
Evaluation of overall impact	<p>The scheme is widely known and well established.</p> <p>The scheme’s voluntary nature makes it less of a threat to industry.</p>
Website	http://ec.europa.eu/environment/ecolabel/

³⁰⁷ European Commission, “EU Ecolabel Complaint Form”.

<http://ec.europa.eu/environment/ecolabel/documents/EU-Ecolabel-Complaint-Form.doc>

³⁰⁸ European Commission, “Ecolabel: Product Groups and Criteria”.

<http://ec.europa.eu/environment/ecolabel/products-groups-and-criteria.html>

³⁰⁹ Benassi, Andrea, Wilfried Haensel, Brigitte Dero, Rudi Bornms, Jean-Pierre de Grieve, Alexandre Dangis, Veronique Steukers, Luca Bielli, William H. Lakin and Hubert Creyf, “European ecolabel scheme threatened by failure to take account of scientific assessment”, UEAPME, 17 June 2008.

http://www.ueapme.com/docs/pos_papers/2008/080616_cross-industry_paper_ecolabel_and_science.pdf

10.4 INTEGRATED POLLUTION PREVENTION AND CONTROL (IPPC) CERTIFICATION

Category	Integrated Pollution Prevention and Control (IPPC) Certification
Nature and type of scheme	Europe-wide mandatory permit scheme for pollution prevention and control.
Country	European Union.
Inception (date/year)	1999
Issuing organisation and type	Certificates are issued by competent authorities in Member States. Examples include the Environment Agency in the United Kingdom.
Objective of the scheme	The website suggests, “The aim of the IPPC Directive is to achieve integrated prevention and control of pollution arising from about 50.000 large industrial installations across the EU 27. It requires installations to operate in accordance with permits which include emission limit values or other technical measures based on the use of Best Available Techniques (BAT) to prevent or reduce emissions to water, air and soil, as well as to tackle other environmental impacts.” ³¹⁰
Brief description of the scheme	<p>According to the website: This Directive (“the IPPC Directive”) requires industrial and agricultural activities with a high pollution potential to have a permit. This permit can only be issued if certain environmental conditions are met, so that the companies themselves bear responsibility for preventing and reducing any pollution they may cause. Integrated pollution prevention and control concerns new or existing industrial and agricultural activities with a high pollution potential, as defined in Annex I to the Directive (energy industries, production and processing of metals, mineral industry, chemical industry, waste management, livestock farming, etc.).”³¹¹</p> <p>The essence of IPPC is that operators should use the best option available to achieve a high level of protection of the environment. IPPC achieves this by requiring permits to be based on the use of the best available techniques (BAT). This, together with a consideration of the local environmental conditions, the technical characteristics of the installation and its location, provides the basis for setting emission limit values (ELVs) and other permit conditions.³¹²</p>
Target of the scheme	Polluting industries (above a capacity threshold).
Beneficiaries of the scheme	The general environment, human health.
Regulatory/compliance framework underlying the scheme	Initially: Council of the European Union, Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. ³¹³

³¹⁰ European Commission, Report from the Commission to the Council and the European Parliament: Report from the Commission on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, COM/2010/0593 final, Brussels, 25 Oct 2010.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0593:EN:NOT>

³¹¹ European Commission, “Integrated Pollution Prevention and Control”.

http://europa.eu/legislation_summaries/environment/waste_management/128045_en.htm

³¹² Department for Environment, Food and Rural Affairs (DEFRA), *Environmental Permitting Guidance: The IPPC Directive Part A (1) Installations and Part A(1) Mobile Plant For the Environmental Permitting (England and Wales) Regulations 2010*, Version 3.0, March 2010.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69319/pb13634-ep2010ippc.pdf

³¹³ *OJ L 257*, 10 Oct 1996, pp. 0026 -0040.

	<p>The original IPPCD was adopted in 1996 and has applied since October 1999 both to new installations and to existing installations where the operator has carried out substantial changes. Since 31 October 2007, the Directive has also applied to existing installations.³¹⁴</p> <p>European Parliament and the Council, Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control.³¹⁵</p> <p>European Parliament and the Council, Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (or the Industrial Emissions Directive)³¹⁶ recasts seven current Directives into a single one regulating emissions from various industrial activities, ranging from power generation, intensive pig farming, waste incineration to dry cleaning. Much of the material in the component Directives is substantively unchanged, but there are some tightened or clarified requirements.</p>
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	<p>The various Directives supporting the scheme required transposition into national law.</p> <p>The Directive, together with six other pieces of legislation, have been merged and recast in the Industrial Emissions Directive (IED). Shortcomings identified in previous reports or during the current reporting period have largely been tackled by the IED.</p> <p>Regulation (EC) No 166/2006, which establishes a European Pollutant Release and Transfer Register (PRTR), harmonises the rules whereby Member States have to regularly report information on pollutants to the Commission.³¹⁷</p>
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	No.
What mechanism or entity controls the scheme at EU level?	<p>European Commission, DG Environment.</p> <p>The European IPPC Bureau (EIPPCB) does not control the scheme at the EU level, however, it organises and coordinates the exchange of information that leads to the drawing up and review of BAT Reference documents (or BREFs)³¹⁸ according to the dispositions of the Guidance document on the exchange of information (Commission Implementing Decision 2012/119/EU).³¹⁹</p> <p>The EIPPCB is an output oriented team which produces the BREFs.</p>

³¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0593:EN:NOT>

³¹⁵ *OJ L* 24, 29 Jan 2008.

³¹⁶ European Parliament and the Council, Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control), *OJ L* 334, 17 Dec 2010, p. 17-119.

³¹⁷ European Commission, "Integrated Pollution Prevention and Control".

http://europa.eu/legislation_summaries/environment/waste_management/l28045_en.htm

³¹⁸ European Commission, Joint Research Centre, Institute for Prospective Technological Studies, "Reference Documents". http://eippcb.jrc.es/about/more_information.html

³¹⁹ European Commission, Joint Research Centre, Institute for Prospective Technological Studies, "European IPPC Bureau". <http://eippcb.jrc.es/ief/>

	BREFs are the main reference documents used by competent authorities in Member States when issuing operating permits for the installations that represent a significant pollution potential in Europe. There are around 50,000 of these installations in Europe. ³²⁰
What level of integration have Member States achieved in the field?	Competent authorities in Member States determine permits, emission limit values, and national legislation. This introduces a relatively high level of variation. The BAT information is co-ordinated across the EU by the European IPPC Bureau. One academic study outlines some criticisms of the level of integration. ³²¹
What are the requirements for implementation of the scheme at Member State level?	The national regulator who issues the certificate, sets the permit conditions and exercises enforcement powers.
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	None found.
How many entities were certified in 2012? How many have been certified so far in 2013?	Integrated Pollution Prevention and Control (IPPC) applies to about 4,000 industrial installations in the UK (about 45,000 in the EU). ³²²
What are the conditions for award of certification?	In order to receive a permit, an industrial or agricultural installation must comply with certain basic obligations. In particular, it must: <ul style="list-style-type: none"> • use all appropriate pollution prevention measures, namely the best available techniques (which produce the least waste, use less hazardous substances, enable the substances generated to be recovered and recycled, etc.); • prevent all large-scale pollution; • prevent, recycle or dispose of waste in the least polluting way possible; • use energy efficiently; • ensure accident prevention and damage limitation; and • return sites to their original state when the activity is over. <p>The general principles of Article 3 of the IPPC Directive are:</p> <ul style="list-style-type: none"> • all the appropriate preventive measures are taken against pollution, in particular through the application of BAT; • no significant pollution is caused; • waste production is avoided in accordance with the Waste Framework Directive (2006/12/EC); where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;

³²⁰ Ibid.

³²¹ Kaya, Eda, *The Implementation of the IPPC Directive to SMEs in Textile Industry in Turkey*, Lund University, November 2005. http://www.lumes.lu.se/database/alumni/04.05/theses/eda_kaya.pdf

³²² Department for Food, Environment & Rural Affairs (DEFRA), "Integrated Pollution Prevention and Control". <http://www.defra.gov.uk/industrial-emissions/eu-international/ippc/>

	<ul style="list-style-type: none"> • energy is used efficiently; • the necessary measures are taken to prevent accidents and limit their consequences; • the necessary measures are taken upon definitive cessation of activities to avoid any pollution risk and return the site of operation to a satisfactory state <p>The regulator may impose permit conditions to reflect the general principles set out in Article 3. This means that the permit may include conditions relating to, for example environmental accident prevention.</p>
What is the certification process?	<p>Permit applications: All permit applications must be sent to the competent authority of the Member State concerned, which will then decide whether or not to authorise the activity. Applications must include information on the following points:</p> <ul style="list-style-type: none"> • a description of the installation and the nature and scale of its activities as well as its site conditions; • the materials, substances and energy used or generated; • the sources of emissions from the installation, and the nature and quantities of foreseeable emissions into each medium, as well as their effects on the environment; • the proposed technology and other techniques for preventing or reducing emissions from the installation; • measures for the prevention and recovery of waste; • measures planned to monitor emissions; • possible alternative solutions.³²³ <p>Without infringing the rules and practice of commercial and industrial secrecy, this information must be made available to interested parties such as:</p> <ul style="list-style-type: none"> • the public, using the appropriate means (including electronically) and at the same time as information concerning the procedure for licensing the activity, the contact details of the authority responsible for authorising or rejecting the project and the possibility for the public to take part in the licensing process; • other Member States, if the project is likely to have cross-border effects. Each Member State must submit this information to interested parties in its territory so that they can give their opinion.³²⁴ <p>Sufficient time must be allowed for all interested parties to react. Their opinions must be taken into account in the licensing procedure.</p>
What are the costs related to the scheme?	<p>There is no charge for the licence.</p> <p>The Commission requested an “assessment of the costs and benefits of the implementation of the IPPC Directive in 2020”. Its report “describes the costs and benefits associated with two different interpretations of the requirements of the Directive, and compares these to the baseline being used in the NEC revision analysis”.³²⁵</p>
What mechanisms have	The decision to license or reject a project, the arguments on which this

³²³ European Commission, “Integrated Pollution Prevention and Control”.

http://europa.eu/legislation_summaries/environment/waste_management/128045_en.htm

³²⁴ Ibid.

³²⁵ AEA Energy and Environment, “Evaluation of the costs and benefits of the implementation of the IPPC Directive on Large Combustion Plant”, European Commission DG ENV.C.5, ED48763, Issue Number 3, July 2007. http://www.cafe-cba.org/assets/ippc_ec_lcplant.pdf

<p>been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?</p>	<p>decision is based and possible measures to reduce the negative impact of the project must be made public and sent to the other Member States concerned. The Member States must, in accordance with their relevant national legislation, make provision for interested parties to challenge this decision in the courts.</p> <p>Member States are responsible for inspecting industrial installations and ensuring that they comply with the Directive. An exchange of information on best available techniques (serving as a basis for setting emission limit values) is held regularly between the Commission, Member States and the industries concerned. Reports on the implementation of the Directive are drawn up every three years.³²⁶</p> <p>Furthermore, to ensure full public access to the information reported, the Commission has developed the 'Industrial Emissions Reporting Information System' website.³²⁷</p> <p>Article 14 of the IPPC Directive requires operators to regularly inform the competent authorities of the results of emission monitoring and afford the representatives of competent authorities all necessary assistance to carry out on-site inspections. The actual practices of compliance monitoring and enforcement vary widely between, and even within, Member States. Most Member States have developed online databases and/or e-mail submission of monitoring reports. The Commission encourages the use of such tools, which facilitate the dataflow between operators and authorities and reduce administrative burden.</p> <p>Several Member States have established a minimum on-site inspection frequency, which is typically once a year (for example in Slovenia, UK, Hungary, Estonia, Lithuania, France, Malta or Cyprus). However, in some cases, a lower frequency is set.³²⁸</p>
<p>Describe the mechanism for receiving and responding to complaints.</p>	<p>The permit issuing process has a public dimension where objections can be made.</p> <p>The 2008 IPPC Directive ensures that the public has a right to participate in the decision making process, and to be informed of its consequences, by having access to:</p> <ul style="list-style-type: none"> (a) permit applications in order to give opinions, (b) permits, (c) results of the monitoring of releases, and (d) the European Pollutant Release and Transfer Register (E-PRTR).³²⁹ <p>In E-PRTR, emission data reported by Member States are made</p>

³²⁶ European Commission, "Integrated Pollution Prevention and Control".

http://europa.eu/legislation_summaries/environment/waste_management/128045_en.htm

³²⁷ European Commission's DG Environment, "Industrial Emissions Reporting Information System - IRIS".
<http://iris.eionet.europa.eu/>

³²⁸ European Commission, Report from the Commission to the Council and the European Parliament: Report from the Commission on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, COM/2010/0593 final, Brussels, 25 Oct 2010.

³²⁹ European Environment Agency, "The European Pollutant Release and Transfer Register (E-PRTR)".
<http://prtr.ec.europa.eu/>

	accessible in a public register which is intended to provide environmental information on major industrial activities. The E-PRTR has replaced the previous EU-wide pollutants inventory called the European Pollutant Emission Register (EPER).
For how long is the certification valid?	<p>Article 13 of the IPPC Directive requires permits to be periodically reconsidered and, where necessary, updated. This is necessary, in particular, when substantial changes in BAT allow emissions to be reduced significantly without imposing excessive costs.</p> <p>Many Member States lay down specific rules for the reconsideration and updating of permits in their legal systems, although these rules vary substantially. Some Member States have established a time span for the IPPC permits, after which renewal is mandatory. For example, permits are valid for 10 years in Austria and Romania, and 8 years in the Czech Republic, Slovakia and Spain. Slovakia extends this period to 10 years if the installation implements an Environmental Management Scheme. Some other countries, such as Poland or the UK, have introduced a general requirement to review the permits on a periodic basis which is specified in the individual permit.</p> <p>BAT is a dynamic concept which evolves over time, and the permits need to be updated in order to foster ongoing environmental improvement by the industry. The IED lays down more detailed rules on the review of permits and, in particular, provides for the compulsory reconsideration of permits within four years of publication of decisions on BAT conclusions.”³³⁰</p>
In which Member States is the certification scheme valid and supported?	All.
If applicable, how frequently have updates been made to the certification scheme?	<p>The original IPPC Directive (96/91/EC) has been amended four times.</p> <p>“The first amendment³³¹ reinforced public participation in line with the Aarhus Convention.³³² The second amendment³³³ clarified the relationship between the permit conditions established in accordance with the IPPC Directive and the EU greenhouse gas emission trading scheme.³³⁴ The last two amendments relate to changes regarding Comitology procedures and EPER. The IPPC Directive has been</p>

³³⁰ European Commission, Report from the Commission to the Council and the European Parliament: Report from the Commission on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, COM/2010/0593 final.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0593:EN:NOT>

³³¹ European Parliament and the Council, Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, *OJ L* 156, 25 June 2003, pp. 17–25.

³³² European Commission, “The Aarhus Convention”. <http://ec.europa.eu/environment/aarhus/>

³³³ European Parliament and the Council, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, *OJ L* 275, 25 Oct 2003, pp. 32–46. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0087:EN:NOT>

³³⁴ European Commission, “The EU emissions trading system (EU ETS)”. http://ec.europa.eu/environment/climat/emission/index_en.htm

	<p>codified (Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control).³³⁵ The IPPC Directive will be repealed with effect from 7 January 2014 by Directive 2010/75/EU on industrial emissions³³⁶.”³³⁷</p> <p>Transition to the Industrial Emissions Directive: During the transition from the current legal framework to the new Industrial Emissions Directive (IED), there was a last reporting cycle for the IPPC Directive (2009-2011) in order to allow the Commission to continue to follow up the implementation of this Directive. At the same time, the Commission is preparing the ground for supporting and promoting the transposition and implementation of the IED by the Member States.³³⁸</p> <p>Following the inter-institutional negotiations, the Directive on industrial emissions 2010/75/EU (IED) was adopted on 24 November 2010. It entered into force on 6 January 2011 and has to be transposed into national legislation by Member States by 7 January 2014. The IED repeals the IPPC Directive and the sectoral directives as of 7 January 2014, with the exception of the LCP Directive, which will be repealed with effect from 1 January 2016.³³⁹</p>
What are the scheme’s key success factors?	<p>Adaptability (best available technique keeps the standards up to date).</p> <p>According to the UK Department for Environment, Food and Rural Affairs (DEFRA), “The BAT approach ensures that the cost of applying techniques is not excessive in relation to the environmental protection they provide. It follows that the more environmental damage BAT can prevent, the more the regulator can justify telling the operator to spend on it before the costs are considered excessive.”³⁴⁰</p> <p>The IPPC Directive contains elements of flexibility by allowing the licensing authorities, in determining permit conditions, to take into account:</p> <ul style="list-style-type: none"> (a) the technical characteristics of the installation, (b) its geographical location, and (c) the local environmental conditions. <p>The IPPC is mandatory. It integrates with general regulation.</p>
Identify the criticisms, failures, concerns and	<p>A Commission report states, “The Commission has also focussed efforts on ensuring the quality of the permits issued. A total of 61 IPPC</p>

³³⁵ European Parliament and the Council, Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version), *OJ L 24*, 29 Jan 2008, pp. 8–29.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0001:EN:NOT>

³³⁶ European Commission, “Summary of Directive 2010/75/EU on Industrial Emissions”.

<http://ec.europa.eu/environment/air/pollutants/stationary/ied/legislation.htm>

³³⁷ European Commission, “The IPPC Directive”.

<http://ec.europa.eu/environment/air/pollutants/stationary/ippc/legis.htm>

³³⁸ European Commission, “The IPPC Directive: Key Implementing Measures”.

http://ec.europa.eu/environment/air/pollutants/stationary/ippc/key_impl.htm

³³⁹ European Commission, “Revision of the IPPC Directive”.

http://ec.europa.eu/environment/air/pollutants/stationary/ippc/ippc_revision.htm

³⁴⁰ Department for Environment, Food and Rural Affairs (DEFRA), *Environmental Permitting Guidance: The IPPC Directive Part A (1) Installations and Part A (1) Mobile Plant For the Environmental Permitting (England and Wales) Regulations 2010*, Version 3.0, March 2010.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69319/pb13634-ep2010ippc.pdf

challenges to the scheme.	<p>installations across 16 Member States and 12 sectors covered have been examined in detail as case studies. The final reports of these studies are available on the Commission's website. The main problem identified by the Commission is the low proportion of permits reflecting the implementation of BAT, as indicated in the relevant BAT Reference documents (BREFs). In particular, no justification could be found for the significant differences between the BREFs and permit conditions set for more than 50 percent of the installations examined. A further study which is currently in progress will cover a further 50 installations in 10 Member States.”³⁴¹</p> <p>On 25 October 2010, the European Commission presented a second report on the implementation of the IPPC Directive dealing with the reporting period 2006-2008.³⁴² The reports of the Member States on the implementation of the Directive during this period have revealed a need for some countries to finalise the issuing of permits in order to ensure compliance with the Directive. In addition, case studies undertaken by the Commission have shown that permit conditions are not sufficiently based on BAT. Furthermore, other issues have also been identified, such as the need for a more coherent inspection mechanism, the need to reduce administrative burden and the inability of the current IPPC Directive to meet certain key policy objectives.³⁴³</p> <p>WWF legal experts suggested confusing wording in a provision could contradict CO2 reduction measures and the Emission Trading Scheme Directive.³⁴⁴</p>
Other relevant issues	<p>An explanatory memo from DEFRA highlights, “The concept of BAT is founded upon the need for the techniques to be demonstrably both technically and economically viable in the industry sector concerned. The Directive continues and enhances the information exchange process amongst Member States through which conclusions on (BAT) are reached and adopted by the European Commission. The information exchanged can only come from operational experience and so, by contributing fully to that process as we encourage them to do, operators have full opportunity to influence BAT conclusions and so the standards which their installations have to meet.”³⁴⁵</p>
Evaluation of overall impact	<p>The scheme is potentially significant given its effect on industry. The European Commission believes that the “IPPC and the body of legislation on industrial emissions play a significant role in the</p>

³⁴¹ European Commission, Report from the Commission to the Council and the European Parliament: Report from the Commission on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, COM/2010/0593 final, Brussels, 25 Oct 2010.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0593:EN:NOT>

³⁴² Ibid.

³⁴³ European Commission, “The IPPC Directive: Key implementation measures”.

http://ec.europa.eu/environment/air/pollutants/stationary/ippc/key_impl.htm

³⁴⁴ Eckstein, Anne, “Legal compatibility of ETS and IPPC directives under challenge”, *Europolitics*, 7 April 2010. <http://www.europolitics.info/legal-compatibility-of-ets-and-ippc-directives-under-challenge-art268206-15.html>

³⁴⁵ Department for Environment, Food and Rural Affairs, “Explanatory Memorandum to the Environmental Permitting (England and Wales) (Amendment) Regulations 2013”, 2013. http://www.legislation.gov.uk/ukdsi/2013/9780111532126/pdfs/ukdsiem_9780111532126_en.pdf

	protection and improvement of the European environment and the health of its citizens.” ³⁴⁶
Website	http://ec.europa.eu/environment/air/pollutants/stationary/ippc/ippc_revision.htm

³⁴⁶ European Commission, “Summary of the Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast), Commission Staff Working Document, Brussels, SEC(2007) 1682, 21 Dec 2007.
http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/recast/ia_sum_en.pdf

10.5 GREEN DOT

Category	Green Dot
Nature and type of scheme	Licensed trademark.
Country	European Union, Canada, Mexico.
Inception (date/year)	1990/91 in Germany. 1994 across the EU.
Issuing organisation and type	Various. Private sector scheme. PRO EUROPE s.p.r.l. (PACKAGING RECOVERY ORGANISATION EUROPE), founded in 1995, is the umbrella organisation for European packaging and packaging waste recovery and recycling schemes which mainly use the "Green Dot" trademark as a financing symbol.
Objective of the scheme	<ul style="list-style-type: none"> • To reduce the environmental impact of waste and encourage efficient use of resources through reuse, recycling, and other forms of recovery. • Packaging prevention, recycling, reuse, or recovery, the conservation of resources. • Harmonisation, establishing common rules to allow goods to trade freely throughout the EU. • Raising awareness.
Brief description of the scheme	<p>The Green Dot is a licensed trademark, representing a Europe-wide system of packaging material recycling. The scheme is funded by industry.</p> <p>According to PRO EUROPE, “‘Green Dot’ systems have become internationally recognised models that contribute to the successful implementation of producer responsibility by the companies involved. When you see the ‘Green Dot’ on packaging it means that for such packaging, a financial contribution has been paid to a qualified national recovery organisation, set up in accordance with the principles defined in EU Directive 94/62 on packaging and packaging waste and the respective national laws.”³⁴⁷</p>
Target of the scheme	Companies involved in packaging consumer goods at any point in the production cycle (including retailers).
Beneficiaries of the scheme	<p>The environment.</p> <p>Authorities conducting recycling.</p>
Regulatory/compliance framework underlying the scheme	<p>The European Packaging and Packaging Waste Directive 94/62/EC.³⁴⁸ The Directive came into force on 31 December 1994 and Member States had to implement by 2001. The Directive introduced the concept of ‘Producer Responsibility’ - companies producing consumer goods in packaging must recover their own waste packaging. This is generally impossible except for small volume producers.</p> <p>The Green dot licensing contract to use the Green Dot trademark on packaging materials.</p> <p>According to the Der Grüne Punkt website: The word ‘participation’ is a term from the German Packaging Ordinance.³⁴⁹ ‘Participation in a</p>

³⁴⁷ PRO EUROPE s.p.r.l. <http://www.pro-e.org/About.html>

³⁴⁸ European Parliament and Council, Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, *OJ L* 365, 31 Dec 1994, pp. 10-23

³⁴⁹ See the website of the Federal Ministry for Environment, Nature Conservation and Reactor Safety, http://www.bmu.de/files/pdfs/allgemein/application/pdf/verpackv_4aenderung_en_bf.pdf

	<p>dual system’ means that the manufacturer and distributor of sales packaging filled with goods which normally accumulates at the private end consumer must participate in one or several dual systems in order to ensure national return of such packaging. The collection, sorting and recycling of sales packaging entered into the market is thus financed via so-called ‘participation payments’ which are made to the dual system.³⁵⁰</p> <p>Directive 2008/98/EC on waste and repealing certain Directives.³⁵¹</p> <p>Directive 94/62/EC on packaging and packaging waste.³⁵²</p>
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	<p>PRO EUROPE “develops and checks criteria governing the award of the mark the ‘Green Dot’ to manufacturers, distributors and fillers of packaging and/or packed products in agreement with the European Anti-Trust Commissions. With the co-operation of national collection and recovery systems, the ‘Green Dot’ is to be made into a trade mark of European dimension.”³⁵³</p> <p>Member States have implemented Directive 94/62/EC.</p> <p>European Parliament, the European Council and the European Commission agreed to a revision of the Packaging Directive which came into force on 18 February 2004.³⁵⁴</p> <p>The UK does not have a Green Dot scheme (although companies can still apply to use the trademark) but re-coops recovery costs from packaging manufacturers through other channels.</p>
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	<p>Regulatory authorities in individual countries are empowered to enact fines for non-compliance.</p> <p>The umbrella organisation for world-wide management of the Green Dot is PRO EUROPE (Packaging Recovery Organisation Europe). PRO EUROPE is based in Brussels and was founded in 1995. It is a private limited liability company. PRO EUROPE assists member companies with registering in other countries. PRO EUROPE appoints a company in each of these countries to manage the recycle symbol or trademark</p>
What mechanism or entity controls the scheme at EU level?	<p>PRO EUROPE. According to PRO EUROPE, “If manufacturers were forced to attach different national trade marks to the packaging, this would certainly obstruct the import/export trade. The "Packaging Recovery Organisation Europe s.p.r.l." (PRO EUROPE), which is domiciled in Brussels, was founded to avoid trade barriers such as this from the very beginning.”³⁵⁵ Duales System Deutschland GmbH (Germany), Eco-Emballages S.A. (France), FOST Plus (Belgium) and</p>

³⁵⁰ Der Grüne Punkt, “Questions and Answers”. <http://www.gruener-punkt.de/en/customer/new-customers/questions-and-answers.html#c646>

³⁵¹ European Parliament and the Council, Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives, *OJ L* 312, 22 Nov 2008, pp. 3–30.

³⁵² European Parliament and Council, Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, *OJ L* 365, 31 Dec 1994, pp. 10-23

³⁵³ PRO EUROPE s.p.r.l., “Services”. <http://pro-e.org/PRO-EUROPE-services.html>

³⁵⁴ European Parliament and the Council, Directive 2004/12/EC of 11 February 2004 amending Directive 94/62/EC on packaging and packaging waste – Statement by the Council, the Commission and the European Parliament, *OJ L* 47, 18 Feb 2004, pp. 26-32.

³⁵⁵ PRO EUROPE s.p.r.l., “Legal basis”. <http://pro-e.org/Legal-basis.html>

	ARA Altstoff Recycling Austria AG formed an umbrella organization called PRO EUROPE which stands for Packaging Recovery Organisation EUROPE.
What level of integration have Member States achieved in the field?	<p>The enforcement mechanisms vary by country. The requirement for members to display the logo varies by country. The fees for joining and the ongoing fees vary by country.</p> <p>Different countries have different packing waste laws (in addition to implementation of the Directive) and the Green Dot does not necessarily signify compliance with all of these requirements.</p> <p>According to the PRO EUROPE website:³⁵⁶ The UK responded to the 1994 EU Directive on Packaging and Packaging Waste by way of derivative legislation ‘The Producer Responsibility Obligations (Packaging Waste) Regulations 1997’. The UK in contrast to other EU states has chosen a very unique system. All participants in the chain share the statutory responsibility. The system is open to competition and there are a number of compliance schemes to ensure this. Schemes started in 1997, obligated companies have a choice of registration with a "compliance scheme" or direct registration with the Environment Agency or Scottish Environment Protection Agency or, in Northern Ireland, the Environment and Heritage Service. Either way they will need to register obligatorily under the regulations, but a compliance scheme acts as an intermediary. Seventeen compliance schemes have been registered by the Environment Agency or SEPA and some also operate in Northern Ireland and by the Office of Fair Trading to ensure fair competition. The UK does not operate a "Green Dot Scheme" along the lines of its European counterparts. The use of the trademark is licensed in the UK for those organisations wishing to display the emblem but the use of the mark is not obligatory in the UK. Management of the trademark is carried out by a subsidiary of Valpak, the Green Dot Licensing Company, and similar licensing arrangements are open to other compliance schemes for their own membership.³⁵⁷</p>
What are the requirements for implementation of the scheme at Member State level?	According to the Emergo Group, “Each country has specific recovery and recycling targets for each material that must be met in a specified time period. For countries such as Germany and Belgium, the recovery and recycling targets are quite high due to the mature nature of their programmes and widespread public participation. Bulgaria, Romania and other newer EU members, by contrast, have relatively immature programmes and lower targets.” ³⁵⁸
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	-
How many entities were certified in 2012? How	According to PRO EUROPE, “Today, the ‘Green Dot’ is the most widely used trademark in the world. More than 170,000 companies are

³⁵⁶ PRO EUROPE s.p.r.l., “UK - General Information”. http://pro-e.org/united_kingdom1.htm

³⁵⁷ Ibid.

³⁵⁸ Emergo Group, “Green Dot and Packaging Waste Directive Compliance in Europe”, February 2007. <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

many have been certified so far in 2013?	licensees of the ‘Green Dot’ trademark, while over 460 billion packaging items are labelled annually with the symbol.” ³⁵⁹
What are the conditions for award of certification?	According to PRO EUROPE, “The mark ‘The Green Dot’ on packaging means that, for such packaging, a financial contribution has been paid to a national packaging recovery company that has been set up in accordance with the principles defined in European Directive No. 94/62 and its national law.” ³⁶⁰
What is the certification process?	The process potentially varies in each Member Country with a responsible organisation, under the umbrella of PRO EUROPE. The main feature of the certification process is a licensing agreement (to use the Green Dot trademark on packaging) and a report of the volume and type of packaging that has been produced. This report, sometimes signed off by an independent accountant, is used as the basis for calculating the fee required to participate in the Green Dot scheme.
What are the costs related to the scheme?	<p>The scheme is industry-funded. Fees are based upon material used in packaging, but also vary by country. Costs include a licensing fee for use of the Green Dot and participation fees for the waste produced.</p> <p>The system encourages waste reduction since manufacturers that cut down on packaging waste ultimately pay less in fees. Depending on the volume of the product sold, payments of the Green Dot fees are made on a monthly, quarterly or yearly basis.</p> <p>Specific fee amounts are determined using samples of packaging and the quantity shipped to each country. In all cases, each national recovery organisation requires a report to be submitted showing the amount of packaging that stayed in their country (not the amount initially shipped there) and computes the appropriate fees to be paid.</p> <p>The use of the mark according to the Agreement shall be free of charge. In countries where a national ‘Green Dot’ scheme is or will be established, license fees are to be paid in accordance with the respective trademark contract which is separate from the Agreement (therefore, not a fee per use).</p> <p>The UK license fee is £250 for Valpak Ltd. (19 schemes in total in the UK).</p> <p>Schemes in member countries set their own tariffs, expressed in Euro/Kg.³⁶¹</p> <p>According to PRO EUROPE, several different factors affect fee levels; these include:</p> <ul style="list-style-type: none"> • Existing collection and recovery infrastructure in the waste management sector • The source of packaging used to meet national recycling quotas (household or industry) • The proportionate share of costs that industry bears. Some schemes meet 100% of the cost of collection and recovery, whilst other pay a share. • National recycling quotas and the effect of derogations

³⁵⁹ PRO EUROPE s.p.r.l., <http://www.pro-e.org/About.html>

³⁶⁰ PRO EUROPE s.p.r.l., <http://pro-e.org/Mission-statement.html>

³⁶¹ The tariffs can be found here: <http://pro-e.org/files/Participation%20Costs%202013-edit.pdf>

	<ul style="list-style-type: none"> • Collection systems used (bring to recycling or kerbside collection) • Geographic location and population density • Enforcement regimes • Labour costs and general overheads.³⁶² <p>According to Valpak, “The UK Green Dot® licence does not cover your Green Dot® usage in other countries. If you display the Green Dot® symbol on packaging which you export to other countries, you may need to pay a Green Dot® licence fee in each respective country.”³⁶³</p> <p>Germany: The costs for participation in the dual system of Duales System Deutschland GmbH depend on the packaging material used and the weight of sales packaging entered into the market. The minimum payment to participate in the dual system of Duales System Deutschland GmbH is €140.00 net/year.³⁶⁴</p>
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	<p>The Green Dot license agreement is terminated if the contracting company terminates its agreement with a nationally recognised Green Dot scheme.</p> <p>According the Emergo Group, “European government authorities and Green Dot organisations are increasing surveillance and their regular checks of retail locations to ensure that all products displaying the Green Dot trademark are registered under a genuine Green Dot licence. If they are not, the manufacturer is infringing on international trademark law and will be held accountable. In the UK, for example, it is considered a criminal offence not to comply with the Packaging Waste regulations and cases may be heard by the High Court. Similar legal action can be taken in other European countries as well.”³⁶⁵</p>
Describe the mechanism for receiving and responding to complaints.	Variable. Complaints are directed to the national organisations, rather than PRO EUROPE. However, direct complaints mechanisms (and information on the use of these) is difficult to find. General contact forms, emails and postal addresses are provided for each of the national organisations.
For how long is the certification valid?	Licensing agreements are renewed and fees paid annually (based on reported amount of packaging generated in a year).
In which Member States is the certification scheme valid and supported?	PRO EUROPE states, “The ‘Green Dot’ has evolved into a proven concept in many countries as implementation of Producer Responsibility. Industry in twenty-eight nations is now using the ‘Green Dot’ as the financing symbol for the organisation of recovery, sorting and recycling of sales packaging. Private-sector compliance schemes working toward this objective are today in place in twenty-two EU member states, viz., Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden as well as additional countries include Norway (as an EEA member), Croatia, Turkey, Serbia,

³⁶² PRO EUROPE s.p.r.l., “Frequently asked questions”. http://pro-e.org/Frequently_Asked_Questions.html

³⁶³ Valpak Ltd., “What is Green Dot”.

<http://www.valpak.co.uk/EnsureYourCompliance/GreenDot/IntroducingTheGreenDot.aspx>

³⁶⁴ <http://www.gruener-punkt.de/en/customer/new-customers.html>

³⁶⁵ Emergo Group, “Green Dot and Packaging Waste Directive Compliance in Europe”, February 2007. <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

	<p>Israel and Macedonia. Moreover, PRO EUROPE has concluded co-operation agreements with similar systems in UK (VALPAK) and Canada (StewardEdge). VALPAK and StewardEdge are taking care of the Green Dot in UK and the NAFTA region to ensure that all licensees of the Green Dot may use labelled packaging without problems throughout the world”.³⁶⁶</p> <p>PRO EUROPE states, “DSD holds the rights to the mark ‘Der Grüne Punkt’ which is applied for registration and/or registered as a device mark and/or as a combined mark in a number of countries world-wide. DSD has granted the rights to license and use the mark ‘Der Grüne Punkt’ to PRO E for the entire area of the Europe (with the sole exception of the Federal Republic of Germany) via a general licensing agreement.”³⁶⁷</p>
If applicable, how frequently have updates been made to the certification scheme?	See the Directive 2008/98/EC on waste and repealing certain Directives. ³⁶⁸
What are the scheme’s key success factors?	<ul style="list-style-type: none"> • One factor is the scheme’s legal support through a Directive and its quasi-mandatory effect. • The Green Dot is a recognisable brand. • Some local flexibility. • Reward for compliance with legislation. <p>According to the Emergo Group, “Manufacturers essentially have two options for complying with the Directive. They can join a pan-European compliance scheme such as Green Dot or choose to come up with their own packaging recovery programme that complies with the packaging waste recovery targets set forth in the national laws.”³⁶⁹</p> <p>Good information available (online on websites).</p>
Identify the criticisms, failures, concerns and challenges to the scheme.	<p>The logo can be confused with the Recyclable logo, even though the presence of the Green Dot on a piece of packaging does not mean that the packaging is fully recyclable (only that its manufacturers are contributing towards the cost of its recovery).</p> <p>There have been problems of free-riding by companies using the Green Dot logo on packaging without the necessary licenses. Green Dot licensing authorities (Green Dot Malta) responded to this in Malta through trademark violation lawsuits.</p> <p>PRO EUROPE and its German member organisation DSD GmbH have obtained and defended, through registrations, trademark rights in approximately 170 countries all over the world. Besides the application, registration and defending of a trademark it is necessary to prove the legal use of a trademark.³⁷⁰</p> <p>According to the Emergo Group, some countries will generate invoices, but others will ask for payment based on the packaging volume report submitted. This often presents a problem for larger</p>

³⁶⁶ PRO EUROPE s.p.r.l., <http://www.pro-e.org/About.html>

³⁶⁷ PRO EUROPE s.p.r.l., http://pro-e.org/files/13_04%2017_Supple__agreement.pdf

³⁶⁸ European Parliament and the Council, Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives, *OJ L* 312, 22 Nov 2008, pp. 3–30.

³⁶⁹ <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

³⁷⁰ PRO EUROPE s.p.r.l., “Trademark Issues”. <http://pro-e.org/Trademark-Issues.html>

	<p>companies whose accounting departments require an invoice for payment to be made.³⁷¹</p> <p>There have been criticisms in Germany of the private nature of the company running the Duales System; there is no economic link between systems in other countries and DSD.³⁷²</p>
Other relevant issues	<p>According to PRO EUROPE, it “has entered into licence agreements with the company StewardEdge, Toronto, Canada and with the company Valpak UK Ltd., London, England, which entitles and obliges these companies to licence and supervise the trade marks in these countries in accordance with the provisions of their agreements, although no Green Dot recovery systems are currently operating in Canada and England. The reason for this agreement is the great importance of these two economic regions. These two partners are responsible for ensuring that the companies selling or distributing products in Canada, U.S. and Mexico or, respectively, the UK which carry ‘The Green Dot’ and wishing to display it are not confronted with claims by a holder of a similar trade mark”.³⁷³ Further PRO EUROPE states, its co-operation partners have “agreed to ensure the protection of the Green Dot in the respective licence territory. Therefore, they offer licence agreements for the use of the Green Dot on packaging which is intended to be distributed in the UK. Interested entities are asked to get in contact with Valpak. Companies who distribute packaging in the U.S., Canada and/or Mexico are asked to contact StewardEdge. Contact details can be found on the respective homepage.”³⁷⁴</p>
Evaluation of overall impact	<p>Der Grüne Punkt claims 98% awareness rating in Germany and being one of the world’s best known trademarks.³⁷⁵</p> <p>The European Commission claimed 25 million tonnes of CO2 equivalent and 10 million tonnes of oil equivalent was saved due to packaging recycling and other forms of recovery (up to 2002), alongside an absolute reduction in the amount of packaging waste going to landfill, and a decoupling of GDP and packaging consumption in several countries.³⁷⁶</p> <p>Over 200 million people dispose of their packaging via a collection system set up by a Green Dot organisation and more than 14.7 million tonnes of used packaging were recovered and recycled in 2005 by these European organisations.³⁷⁷</p>

³⁷¹ Emergo Group, “Green Dot and Packaging Waste Directive Compliance in Europe”, February 2007. <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

³⁷² Birkenstock, Günther, “German Green Dot Recycling system under threat”, *Deutsche Welle*, 15 July 2013. <http://www.dw.de/german-green-dot-recycling-system-under-threat/a-16939098>

³⁷³ PRO EUROPE s.p.r.l., “Trademark Issues”. <http://pro-e.org/Trademark-Issues.html>

³⁷⁴ Ibid.

³⁷⁵ Der Grüne Punkt. <http://www.gruener-punkt.de/en/duales-system-deutschland-gmbh/brand.html>

³⁷⁶ European Commission “Report from the Commission to the Council and the European Parliament on the Implementation of Directive 94/62/EC on Packaging and Packaging Waste and its Impact on the Environment, as well as on the Functioning of the Internal Market, European Commission, COM(2006) 767, 6 Dec 2006.

³⁷⁷ Emergo Group, “Green Dot and Packaging Waste Directive Compliance in Europe”, February 2007. <http://www.emergogroup.com/resources/articles/packaging-waste-directive-compliance-europe>

	Der Grüne Punkt suggests, “In Austria, for instance, a 78 percent reduction was recorded for packaging waste consigned to landfill from 1994 to 2001”. ³⁷⁸
Website	http://pro-e.org/

³⁷⁸ Schiffler, Dr. Heike, “Europe Goes Green Dot”, Der Grüne Punkt – Duales System Deutschland AG, 2004.
http://www.rsjtechnical.com/images/Documents/Packaging_Green_Dot.pdf

10.6 INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

Category	International Financial Reporting Standards (IFRS) (previously <i>International Accounting Standards</i>)
Nature and type of scheme	Global accounting standards for the preparation of public company financial statements.
Country	UK.
Inception (date/year)	International Accounting Standards (IAS) were issued between 1973 and 2001 by the Board of the International Accounting Standards Committee (IASC). On 1 April 2001, the new International Accounting Standards Board (IASB) took over the responsibility for setting International Accounting Standards from the IASC. During its first meeting the new Board adopted existing IAS and Standing Interpretations Committee standards (SICs). The IASB has continued to develop standards calling them the 'International Financial Reporting Standards (IFRS)'.
Issuing organisation and type	The IASB is part of the International Financial Reporting Standards (IFRS) Foundation. The IFRS Foundation is an independent, not-for-profit private sector organisation. The IASB is the independent standard-setting body of the Foundation. ³⁷⁹ Its members (currently, 15 full-time members) are responsible for the development and publication of IFRSs, including the IFRS for SMEs and for approving Interpretations of IFRSs as developed by the IFRS Interpretations Committee (formerly the IFRIC). According to itself, the IASB "follows a thorough, open and transparent due process of which the publication of consultative documents, such as discussion papers and exposure drafts, for public comment is an important component. The IASB engages closely with stakeholders around the world, including investors, analysts, regulators, business leaders, accounting standard-setters and the accountancy profession." ³⁸⁰
Objective of the scheme	<p>The objective of general purpose financial reporting is to "provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions about providing resources to the entity. Moreover, it is directed at users who provide resources to a reporting entity, but lack the ability to compel the entity to provide them with the information they need to make decisions about their investments"³⁸¹</p> <p>The IFRS Foundation aims:³⁸²</p> <ul style="list-style-type: none"> • To develop a single set of high quality, understandable, enforceable and globally accepted International Financial Reporting Standards (IFRSs) through its standard-setting body, the International Accounting Standards Board (IASB);

³⁷⁹ IFRS Foundation, "About the IFRS Foundation and the IASB". <http://www.ifrs.org/The-organisation/Pages/IFRS-Foundation-and-the-IASB.aspx>

³⁸⁰ Ibid.

³⁸¹ See IFRS Foundation, "Conceptual Framework: Objectives and Qualitative Characteristics". <http://www.ifrs.org/Current-Projects/IASB-Projects/Conceptual-Framework/Objectives-and-qualitative-characteristics/Pages/Objectives-and-qualitative-characteristics.aspx>

³⁸² Ibid.

	<ul style="list-style-type: none"> • to promote the use and rigorous application of those standards; • to take account of the financial reporting needs of emerging economies and small and medium-sized entities (SMEs); and • to promote and facilitate adoption of IFRSs, being the standards and interpretations issued by the IASB, through the convergence of national accounting standards and IFRSs.
Brief description of the scheme	(EU context): All companies listed on a regulated EU market must follow IFRS in their consolidated financial statements. Non-EU companies listed on an EU-regulated market must also file financial statements prepared either using IFRSs issued by the IASB or a Generally Accepted Accounting Principles (GAAP) designated by the EC as equivalent to the IFRSs.
Target of the scheme	Financial companies (banks, insurance companies).
Beneficiaries of the scheme	The beneficiaries of the scheme include: investors, analysts, regulators, business leaders, accounting standard-setters and the accountancy profession.
Regulatory/compliance framework underlying the scheme	<p>The IFRS standards are developed and published by the IASB.</p> <p>In June 2002, the European Union adopted an IAS Regulation (Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards) requiring European companies listed in an EU securities market, including banks and insurance companies, to prepare their consolidated financial statements in accordance with IFRSs starting with financial statements for financial year 2005 onwards. The European IAS regulation applies not only to the 28 EU Member States but also to the three members of the European Economic Area (EEA) - Iceland, Liechtenstein, and Norway.</p> <p>Also relevant is Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.</p>
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	Each International Accounting Standard (IAS) and International Financial Reporting Standard (IFRS) as well as related interpretations (SIC/IFRIC) are adopted by the EU in the form of regulations. ³⁸³
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	<p>The Accounting Regulatory Committee (ARC), composed of representatives from Member States and chaired by the European Commission, was set up pursuant to the requirements of Article 6 of the IAS Regulation (EC/1606/2002). The function of the Committee is a regulatory one and entails providing an opinion on Commission proposals to adopt (endorse) an international accounting standard as envisaged under Article 3 of the IAS Regulation.³⁸⁴</p> <p>The Standards Advice Review Group (SARG), established by the</p>

³⁸³ For a list of Regulations adopting IAS, see

http://ec.europa.eu/internal_market/accounting/legal_framework/regulations_adopting_ias/original_text_en.htm

³⁸⁴ European Commission, "Accounting Regulatory Committee".

http://ec.europa.eu/internal_market/accounting/committees/arc/index_en.htm

	<p>European Commission in July 2006, ensures “objectivity and proper balance of the European Financial Reporting Advisory Group's (EFRAG) opinions”.³⁸⁵ The Group comprises independent experts and high-level representatives from National Standard Setters with wide accounting experience. Its task is to assess whether EFRAG’s endorsement advice is well balanced and objective.</p> <p>The Roundtable for the consistent application of IFRSs acts as “a simple and efficient forum for European accounting experts to identify, at an early stage, emerging and potentially problematic accounting issues in relation to consistent application”.³⁸⁶ The Roundtable is expected to “complete the existing European infrastructure contributing to a proper and consistent application of IFRS”.³⁸⁷</p>
What mechanism or entity controls the scheme at EU level?	<p>The key entity is the European Financial Reporting Advisory Group (EFRAG) (a private sector body) established in 2001 with the encouragement of the European Commission to provide input into the development of IFRS issued by the IASB and to provide the European Commission with technical expertise and advice on accounting matters.³⁸⁸ Influencing the international debate on accounting matters from a European perspective is EFRAG’s primary objective. The main role of EFRAG is to provide input into the development of IFRS issued by the IASB in such a way that the resulting standards and interpretations are good for Europe and therefore are capable of being endorsed for use in Europe. EFRAG does so through its participation in the IASB’s consultation process and its proactive work. EFRAG also provides the European Commission with technical expertise and advice on the technical quality of IFRS that the European Commission decides to consider for endorsement.</p>
What level of integration have Member States achieved in the field?	<p>Since 2005, all listed EU companies are required to use <i>IFRS</i>.</p> <p>The European Commission table on Implementation of the IAS Regulation (1606/2002) in the EU and EEA shows the level of integration.³⁸⁹</p>
What are the requirements for implementation of the scheme at Member State level?	<p>As prescribed by legislation.</p>
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	<p>Not found.</p>
How many entities were	<p>According to a Deloitte 2013 Guide, over 8,000 EU listed companies</p>

³⁸⁵ European Commission, “Standards Advice Review Group”.

http://ec.europa.eu/internal_market/accounting/committees/sarg/index_en.htm

³⁸⁶ European Commission, “Round Table for the Consistent Application of IFRSs”.

http://ec.europa.eu/internal_market/accounting/committees/roundtable/index_en.htm

³⁸⁷ Ibid.

³⁸⁸ European Financial Reporting Advisory Group. <http://www.efrag.org/Front/Home.aspx>

³⁸⁹ European Commission, “Implementation of the IAS Regulation (1606/2002) in the EU and EEA” 7 Feb. 2012. http://ec.europa.eu/internal_market/accounting/docs/ias/ias-use-of-options_en.pdf

certified in 2012? How many have been certified so far in 2013?	use these standards alongside an unmentioned number of non-EU companies. ³⁹⁰
What are the conditions for award of certification?	According to Regulation 1606/2002: For each financial year starting on or after 1 January 2005, companies governed by the law of a Member State are required to prepare their consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6 (2) if, at their balance sheet date, their securities are admitted to trading on a regulated market of any Member State within the meaning of Article 1(13) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field.
What is the certification process?	As prescribed in the individual applicable standards. ³⁹¹
What are the costs related to the scheme?	<p>A 2007 ICAEW report on the IFRS Scheme for the European Commission found on the basis of an online survey that the typical costs of preparing the first IFRS consolidated statements for publicly traded companies were as follows:³⁹²</p> <p>Companies with turnover below €500m - 0.31% of turnover Companies with turnover from €500m - €5,000m: 0.05% of turnover Companies with turnover above €5,000m - 0.05% of turnover</p> <p>The Study also estimated the typical recurring costs of preparing IFRS consolidated financial statements as follows:³⁹³</p> <p>Companies with turnover below €500m - 0.06% of turnover Companies with turnover from €500m - €5,000m: 0.01% of turnover Companies with turnover above €5,000m - 0.008% of turnover.</p>
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	<p>The main enforcement body for Europe is the European Securities and Marketing Authority (ESMA) which together with the national competent authorities, aims to “reinforce the level of convergence of financial information supervision and enforcement activities reflecting the strong commitment to contribute to the consistent application of IFRS around the globe”.³⁹⁴ To meet this objective, ESMA works through the ESMA’s European Enforcers Coordination Sessions (EECS), a forum of 37 European enforcers from the 27 Member States, Iceland and Norway.³⁹⁵</p> <p>Supervision of listed entities and enforcement of financial information is performed at national level as required by the Transparency Directive, according to which each Member State has to designate a Competent Authority for the enforcement of financial information. In most countries enforcement is carried out by one authority. In the United Kingdom and Ireland two authorities are involved: one</p>

³⁹⁰ Deloitte, *IFRS in your pocket 2013*. <http://www.iasplus.com/en/tag-types/ifrs-in-your-pocket/ifrs-in-your-pocket>

³⁹¹ IFRS Foundation, “Access the Unaccompanied Standards and their Technical Summaries”. <http://www.ifrs.org/IFRSs/Pages/IFRS.aspx> See <http://www.ifrs.org/IFRSs/Pages/IFRS.aspx>

³⁹² The Institute of Chartered Accountants in England and Wales (ICAEW), “EU Implementation of IFRS and the Fair Value Directive”, A report for the European Commission, October 2007. http://ec.europa.eu/internal_market/accounting/docs/studies/2007-eu_implementation_of_ifrs.pdf

³⁹³ Ibid.

³⁹⁴ ESMA, “Activity Report of the IFRS Enforcement activities in Europe in 2012”, Report, 22 July 2013. http://www.esma.europa.eu/system/files/2013-1022_activity_report_on_ifrs_enforcement_in_europe_in_2012.pdf

³⁹⁵ ESMA, “IFRS Enforcement”. <http://www.esma.europa.eu/page/IFRS-Enforcement-0>

	authority deals with periodic financial reports and the other with financial information in prospectuses. ³⁹⁶
Describe the mechanism for receiving and responding to complaints.	<p>The IFRS Foundation has the following in place to maintain public accountability:</p> <p>The Monitoring Board: The Trustees have established a formal public accountability link to a Monitoring Board of public capital market authorities.</p> <p>The Constitution Review: The Constitution of the IFRS Foundation requires the Trustees to undertake a formal, public, five-yearly review of the Constitution.</p> <p>Due process: A formal due process for the IASB, the IFRS Interpretations Committee and XBRL³⁹⁷ ensures extensive outreach, which includes mandatory public consultation. Comment letters received in response to formal proposals are made public on the website.</p> <p>Public meetings: All meetings (other than meetings on administrative matters) of the bodies of the IFRS Foundation, including the IASB, the Interpretations Committee and its formal advisory bodies, are held in public and are webcast. Meeting notes are available to the public as observer notes.</p>
For how long is the certification valid?	-
In which Member States is the certification scheme valid and supported?	In June 2002, the European Union adopted an IAS Regulation (Regulation (EC) No 1606/2002) requiring European companies listed in an EU securities market, including banks and insurance companies, to prepare their consolidated financial statements in accordance with IFRSs starting with financial statements for financial year 2005 onwards. The European IAS regulation applies not only to the 28 EU Member States but also to the three members of the European Economic Area (EEA) - Iceland, Liechtenstein, and Norway.
If applicable, how frequently have updates been made to the certification scheme?	The IASB is conducting a comprehensive review of the IFRS for SMEs to consider whether there is a need for any amendments to the standard. ³⁹⁸
What are the scheme's key success factors?	According to the American Institute of Certified Public Accountants (AICPA), "By adopting IFRS, a business can present its financial statements on the same basis as its foreign competitors, making comparisons easier. Furthermore, companies with subsidiaries in countries that require or permit IFRS may be able to use one accounting language company-wide. Companies also may need to convert to IFRS if they are a subsidiary of a foreign company that must use IFRS, or if they have a foreign investor that must use IFRS. Companies may also benefit by using IFRS if they wish to raise capital abroad." ³⁹⁹
Identify the criticisms, failures, concerns and challenges to the scheme.	According to the AICPA, "Despite a belief by some of the inevitability of the global acceptance of IFRS, others believe that U.S. GAAP is the gold standard, and that a certain level of quality will be lost with full

³⁹⁶ [http://www.esma.europa.eu/system/files/2013-](http://www.esma.europa.eu/system/files/2013-1022_activity_report_on_ifrs_enforcement_in_europe_in_2012.pdf)

1022_activity_report_on_ifrs_enforcement_in_europe_in_2012.pdf

³⁹⁷ Refers to eXtensible Business Reporting Language, a digital language developed to provide a common, electronic format for business and financial reporting.

³⁹⁸ IFRS Foundation, "Comprehensive Review 2012-2014". <http://www.ifrs.org/IFRS-for-SMEs/Pages/Review2012.aspx>

³⁹⁹ AICPA, "IFRS". http://www.ifrs.com/updates/aicpa/ifrs_faq.html

	<p>acceptance of IFRS. Further, certain U.S. issuers without significant customers or operations outside the United States may resist IFRS because they may not have a market incentive to prepare IFRS financial statements. They may believe that the significant costs associated with adopting IFRS outweigh the benefits.”⁴⁰⁰</p> <p>The Association Française des Entreprises Privées (AFEP) and the Mouvement des entreprises de France (MEDEF) report on <i>Strengthening the Process for Adopting International Accounting Standards: A Strategic Challenge for the European Union</i>, highlight various concerns and challenges of IFRS.⁴⁰¹ These include:</p> <ul style="list-style-type: none"> • Effects of an inappropriate application of market value and other key concepts of the IFRS that have amplified some aspects of the financial crisis • The concern many companies have that “IFRS do not allow them, in some respects, to properly account for the economic reality of their activities and their performance and therefore cannot be used to manage their operations”. • Due to the difficulties and the impact of accounting standards on economic competitiveness, many jurisdictions have chosen to maintain their sovereignty regarding the implementation of the IFRS (e.g., the United States and Japan). • The EU’s accounting governance system set up for the IFRS is “too complex and insufficiently coherent to have a role within the IASB compatible with its size and its level of involvement with the IFRS, leading to Europe’s position being expressed by many different voices, thus weakening its influence”.⁴⁰²
Other relevant issues	-
Evaluation of overall impact	The scheme is mandatory and therefore has had a strong impact upon the accounting industry in Europe. Since it is also a global standard it has relevance not only within the EU but globally. The scheme also seems to be continuously evolving. However, some issues are left to be addressed as pointed out in the ACEP report; particularly in relation to European needs.
Website	http://www.ifrs.org

⁴⁰⁰ Ibid.

⁴⁰¹ Pébureau, Michel et al., *Strengthening the Process for Adopting International Accounting Standards: A Strategic Challenge for the European Union*, AFEP & MEDEF, July 2013.

<http://www.medef.com/fileadmin/www.medef.fr/documents/AFEP-MEDEF/MEDEF-AFEP-Report-International-accounting-standards.pdf>

⁴⁰² Ibid.

10.7 PAN EUROPEAN GAME INFORMATION (PEGI)

Category	PEGI Rating System
Nature and type of scheme	Sectoral scheme (entertainment/gaming industry). The PEGI rating system is a voluntary system only backed by legislation in a few countries. PEGI uses a combination of content declaration and game review to determine the appropriate PEGI rating for each game. The PEGI system was developed based on existing rating systems in Europe and is supported by the majority of relevant Member State Government Agencies. PEGI for APPS is a rating procedure for small software applications, including but not limited to games, on digital platforms.
Country	Belgium
Inception (date/year)	Operational since April 2003. PEGI Online was launched in 2007. The system is used in more than 30 countries
Issuing organisation and type	<p>The PEGI system is created and owned by the Interactive Software Federation of Europe (ISFE) which is based in Belgium. ISFE has entrusted the day-to-day management and development of the system to a standalone entity called PEGI S.A.</p> <p>NICAM (Netherlands Institute for the Classification of Audiovisual Media) is one of the two independent bodies that administrate the system on behalf of PEGI.</p> <p>The Video Standards Council is the second PEGI administrator and is based in the UK. The VSC checks the higher age games with 12, 16 and 18 ratings against the PEGI criteria.</p>
Objective of the scheme	To provide parents and caregivers with detailed recommendations regarding the age suitability of game content in the form of age labels and content descriptors on game packages.
Brief description of the scheme	<ul style="list-style-type: none"> • Only game content that has been appropriately rated by PEGI or another recognised European system can be included on a site. • Appropriate mechanisms are in place to allow game players to report the existence of undesirable content on any related websites. • Licence holders will use their best endeavours to ensure that online services under their control are kept free of any content which is illegal, offensive, obscene or which might permanently impair the development of young people. • Any PEGI Online licence holder collecting personal information from subscribers will maintain an effective and coherent privacy policy in accordance with European Union and national Data Protection laws. • Licence holders will maintain community standards to prohibit subscribers from introducing content or indulging in online behaviour which is illegal, offensive, obscene, or which might permanently impair the development of young people. • All advertising shall be conducted demonstrating a sense of responsibility towards the public
Target of the scheme	All game software, regardless of format or platform, sold or distributed in Europe by any company subscribing to the standards.
Beneficiaries of the scheme	Game producers (application developers), digital platform operators,

	publishers, consumers (parents, caregivers, children), and the public.
Regulatory/compliance framework underlying the scheme	PEGI Labelling Guidelines and the PEGI Code of Conduct. The PEGI Code of Conduct is a set of rules which publishers of interactive software contractually commit to respect when using the PEGI system. The Code deals with age labelling, promotion and advertising of interactive products. It reflects the interactive software industry's efforts to provide information to the public in a responsible manner.
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	PEGI is an industry based voluntary standard. Countries have individually enforced the PEGI standards.
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	-
What mechanism or entity controls the scheme at EU level?	PEGI S.A.
What level of integration have Member States achieved in the field?	PEGI rated products are marketed in the following 30 countries. The PEGI system applies to all game software, regardless of format or platform, sold or distributed in Europe by any company subscribing to the standards. The institutions of the European Union, together with the vast majority of governments in Europe fully support the project. ⁴⁰³
What are the requirements for implementation of the scheme at Member State level?	Not prescribed.
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	Not applicable.
How many entities were certified in 2012? How many have been certified so far in 2013?	More than 20,000 games rated by the end of 2012. ⁴⁰⁴
What are the conditions for award of certification?	Fulfillment of terms of the PEGI Code. ⁴⁰⁵ The obligations of signatories are set out in Article 5 of the PEGI Code. ⁴⁰⁶ Further Article 6 specifies, "signatories shall ensure that the content, distribution by any means, promotion and advertising of the Products covered by this Code comply at all times with existing and future laws and regulations at EU and national level". ⁴⁰⁷

⁴⁰³ PEGI, *Annual Report 2012*, Brussels, 2012. <http://www.pegi.info/en/index/id/media/pdf/390.pdf>

⁴⁰⁴ Ibid., p. 6.

⁴⁰⁵ PEGI, *Code of Conduct for the European Interactive Software Industry*.
<http://www.pegi.info/en/index/id/1185/media/pdf/372.pdf>

⁴⁰⁶ Ibid., p. 3.

⁴⁰⁷ Ibid., p. 4.

What is the certification process?	<p>The main features of the PEGI System are described in the PEGI Code.⁴⁰⁸ Their implementation is subject to guidelines to be enacted by the PEGI Enforcement Committee (PEC) and to specific agreements to be entered into by the Signatories and PEGI.</p> <ul style="list-style-type: none"> • Prior to product release, Signatories shall, for each product and format thereof complete an Assessment File. • The Assessment File shall generate an age rating Logo and the Descriptors indicating the reasons for classification of the Product in a specific age category. • The PEGI System age rating groups shall be divided as follows: 3, 7, 12, 16, and 18. • The Administrator shall review the Assessment File according to the following prescribed rules. <p>In due course, the User will receive a license to reproduce the Logo and Descriptors corresponding to the final recommendation on the product packaging, or equivalent place immediately visible to consumers where distribution is made via electronic means.</p>
What are the costs related to the scheme?	Certification costs are reportedly around €250 - €3000, depending on the type of title and distribution.
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	Possible wrongful application and/or breaches of the PEGI Code may result in any of the following corrective actions: re-labelling of packaging, revocation and removal of the logos and descriptors, recall of inaccurately labeled product, modification of advertisements both on and offline. Failure to abide by the terms of the PEGI Code, including the failure to institute the corrective action may lead to the imposition of the following sanctions by the PEC: temporary suspension of product from the PEGI and/or PEGI Online Systems, mandatory modification of any associated advertisements both on and off-line, disqualification of the product from the PEGI and/or PEGI Online Systems for a set period, and fines of up to €500,000 per violation depending on the gravity thereof and the failure to take appropriate remedial action.
Describe the mechanism for receiving and responding to complaints.	The Complaints Board comprises a group of independent experts in the protection of minors from different European countries. If a complaint is received from a consumer or publisher regarding a rating given to a game and no satisfactory settlement can be reached by the PEGI administrator through discussion, explanation or negotiation, the complainant may formally request the Complaints Board to mediate. Three board members convene, hear the complaint and decide on a ruling. Publishers using the PEGI system are bound by the decision of the Complaints Board. Consequently, they are obliged to carry out any corrective actions required and, in cases of non-compliance, are subject to sanctions as laid out by the code.
For how long is the certification valid?	Not specified.
In which Member States is the certification scheme valid and supported?	According to the PEGI website, “The PEGI system was developed and based on existing rating systems in Europe and is supported by the majority of relevant Member State Government Agencies”. ⁴⁰⁹ “PEGI has replaced many national age rating systems with a single system now used throughout most of Europe, in 30 countries (Austria Denmark, Hungary, Latvia, Norway, Slovenia, Belgium, Estonia, Iceland, Lithuania, Poland, Spain, Bulgaria, Finland, Ireland,

⁴⁰⁸ Ibid.

⁴⁰⁹ PEGI, “FAQ”. <http://www.pegi.info/sg/index/id/26/>

	Luxembourg, Portugal, Sweden, Cyprus, France, Israel, Malta, Romania, Switzerland, Czech Republic, Greece, Italy, the Netherlands, Slovak Republic and the United Kingdom). The system is supported by the major console manufacturers, including Sony, Microsoft and Nintendo, as well as by publishers and developers of interactive games throughout Europe.” ⁴¹⁰
If applicable, how frequently have updates been made to the certification scheme?	The PEGI Council, PEGI Experts Group, PEGI Developer Group and PEGI Legal Committee are expected to “play key roles in ensuring that the Code evolves in line with all relevant social, political, legal and technological developments”. ⁴¹¹
What are the scheme’s key success factors?	<ul style="list-style-type: none"> • Innovation, e.g. introduction of PEGI Online and PEGI APPS • Communication • Awareness raising efforts ability to rally games publishers that make games available via retail in Europe
Identify the criticisms, failures, concerns and challenges to the scheme.	<p>Called “strange, overly cautious, and often brazenly harsh ratings system” as compared to the BBFC, “giving games an age rating that's undoubtedly a lot higher than many parents would deem reasonable”.⁴¹²</p> <p>Criticised for not catering adequately to contextual sensitivities.⁴¹³</p>
Other relevant issues	-
Evaluation of overall impact	With products in over 30 countries using it, and widespread recognition of the PEGI rating, PEGI seems to have reasonable success. The results of the ISFE Videogames in Europe Consumer Study 2012 support this (one of the findings was that “more than 1 in 2 people recognise the PEGI age labels and that almost everyone finds them clear and useful”. ⁴¹⁴ In 2008, Viviane Reding, EU Commissioner for the Information Society and Media commented, “PEGI, as an example of responsible industry self-regulation and the only such system with almost pan-European coverage, is certainly a very good first step. However, I believe it can be greatly improved, in Europe and beyond, by making the public more aware about its existence and fully implementing PEGI Online. I also call on Member States and the industry to govern the sale of video games in shops to respect the fundamental need to protect minors.” ⁴¹⁵
Website	http://www.pegi.info

⁴¹⁰ Ibid.

⁴¹¹ PEGI, *Annual Report 2012*, Brussels, 2012. <http://www.pegi.info/en/index/id/media/pdf/390.pdf>

⁴¹² Everybody Plays, “The problems with PEGI”, 30 July 2012.

<http://www.everybodyplays.co.uk/feature/360/The-problems-with-PEGI/1064>

⁴¹³ Whitehead, Dan “Is PEGI too tough?” *EuroGamer.net*, 14 April 2011.

<http://www.eurogamer.net/articles/2011-04-14-is-pegi-too-tough-article>

⁴¹⁴ ISFE, “Videogames in Europe: 2012 Consumer Study”, ISFE. <http://www.isfe.eu/videogames-europe-2012-consumer-study>

⁴¹⁵ European Commission, Video games: Commission welcomes progress on protection of minors in 23 EU Member States, but asks for improvement of industry codes, Press Release. IP/08/06, Brussels, 22 April 2008. http://europa.eu/rapid/press-release_IP-08-618_en.htm?locale=FR

10.8 PROTECTED DESIGNATION OF ORIGIN & PROTECTED GEOGRAPHICAL INDICATION

Category	Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI)
Nature and type of scheme	General, agricultural and foodstuff quality, based on a legal standard.
Country	European Union
Inception (date/year)	1992
Issuing organisation and type	<p>Directorate-General for Agriculture and Rural Development, European Commission.</p> <p>Applications are not made directly to the Commission but instead to National Authorities in each Member State. These are generally ministries or departments of agriculture, food, rural affairs. In some cases, food departments of commerce, or standards authorities.</p>
Objective of the scheme	<p>To promote and protect names of quality agricultural products and foodstuffs.</p> <p>A scheme for protected designations of origin and protected geographical indications established in order to help producers of products linked to a geographical area by:</p> <ul style="list-style-type: none"> (a) securing fair returns for the qualities of their products; (b) ensuring uniform protection of the names as an intellectual property right in the territory of the Union; (c) providing clear information on the value-adding attributes of the product to consumers.
Brief description of the scheme	<p>EU certification scheme to add labels to particular food and agricultural products to protect and promote the names of quality agricultural products and foodstuffs – often associated with a particular type of product from a particular region.</p> <p>Food or drink registered at a European level will be given legal protection against imitation throughout the EU. Registered products are entitled to carry an EU symbol which can help consumers recognise product as traditional and authentic.</p>
Target of the scheme	<p><i>Protected Designation of Origin - PDO:</i> covers agricultural products and foodstuffs which are produced, processed and prepared in a given geographical area using recognised know-how.</p> <p><i>Protected Geographical Indication - PGI:</i> covers agricultural products and foodstuffs closely linked to the geographical area. At least one of the stages of production, processing or preparation takes place in the area.</p> <p>Note: There is a third scheme - <i>Traditional Speciality Guaranteed (TSG)</i> which highlights traditional character, either in the composition or means of production).</p> <p>Most foods intended for human consumption can apply for registration including meat, dairy and fish products, honey, fruits and vegetables, beer, beverages made from plant extracts, bread, pasta, pastries, cakes, biscuits and confectionery.</p>
Beneficiaries of the scheme	Producers who register their products for protection benefit from a raised awareness of their product throughout Europe. This may in turn help them take advantage of consumers' increasing awareness of the

	<p>importance of regional and speciality foods.⁴¹⁶</p> <p>Once a product is registered any producer within the designated area complying with the specification is eligible to use the name.</p> <p>The scheme raises consumer confidence, and also that of intermediary purchasers.</p>
Regulatory/compliance framework underlying the scheme	<p>Council Regulation 510/2006/EC of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. OJ L 93, 31.3.2006.</p> <p>Regulation 1151/2012/EU of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJ L 343/1, 14.12.2012</p>
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	Bilateral agreements between the EU and non-EU countries.
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	No new dedicated authorities. The scheme is managed by National Authorities in each Member State - generally, ministries or departments of agriculture, food, rural affairs. In some cases, it is managed by food departments or commerce, or standards authorities.
What mechanism or entity controls the scheme at EU level?	Directorate-General for Agriculture and Rural Development, European Commission.
What level of integration have Member States achieved in the field?	The schemes often work in parallel with appellation schemes already operating in Member States (e.g., the French Appellation d'Origine Contrôlée (AOC), the Spanish Denominación de Origen). The scheme has national authorities in Member States. ⁴¹⁷
What are the requirements for implementation of the scheme at Member State level?	Under this system, a named food or drink registered at a European level is given legal protection against imitation throughout the EU.
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	Regular challenges to particular applications (both at EU and National level), but these are part of the application process.
How many entities were certified in 2012? How many have been certified so far in 2013?	As at September 2013: PDO: 567 and PGI: 557. The EU maintains a publicly accessible database of registered entities (including applications) known as DOORS. ⁴¹⁸
What are the conditions for award of certification?	The conditions for award of certification are:

⁴¹⁶ Department for Environment, Food & Rural Affairs, "Protected food names: guidance for producers", 28 Aug 2013. <https://www.gov.uk/protected-food-names-guidance-for-producers>

⁴¹⁷ European Commission, National Authorities Responsible Departments in Member States, November 2011. http://ec.europa.eu/agriculture/quality/schemes/national-authorities_en.pdf

⁴¹⁸ European Commission Agriculture and Rural Development, DOOR Database. <http://ec.europa.eu/agriculture/quality/door/list.html>

	<ul style="list-style-type: none"> • Local and traditional methods and practices are used; and • The geographical area has characteristics which differ from neighbouring areas • The product has characteristics which are different from those of similar products
What is the certification process?	<ol style="list-style-type: none"> 1. A group of producers must define the product according to precise specifications. 2. Application specifics: <ul style="list-style-type: none"> ○ For a producer in the EU, the application is forwarded to the respective national authority.⁴¹⁹ ○ A producer outside the EU, whose product name is protected in their country, can fill in an online application using DOOR or send it to the Commission, directly or via their national authority. 3. The application dossier is assessed by the appropriate national authority. 4. The application is subject to national opposition procedure - A national objection procedure is initiated where the application is made public, and anyone with a legitimate interest may lodge an objection to the application within the given timescale. Any objections must be admissible. The criteria for admissible objections are specified under Article 10 of Regulation 1151/2012 (PDO/PGIs) and Article 21 of Regulation 1151/2012 (TSGs). Parties who wish to comment/object must state their intention to do so within four weeks. They will then have a further eight weeks to give full details of their comments/objections. 5. For all Protected Food Name applications, once any objections have been considered, national officials decide whether the application should be submitted to the Commission. If so, this decision will be made public. 6. Once any issues arising from the opposition procedure are resolved, the application is submitted to the European Commission where it is subject to a European Commission scrutiny. 7. Publication in the EU Official Journal which commences EU-wide opposition procedure. 8. If no opposition is received, the product is registered as a protected food name. <p>The certification process takes approximately two years.</p>
What are the costs related to the scheme?	<p>According to one document, “There is no monetary cost to producers, but the registration procedure does involve a certain amount of time and effort. If successful, a registered product must be inspected annually to ensure continued compliance with the registered specification and this does involve a small cost to producers. However, the benefits outweigh the cost, as inspection guarantees the product’s authenticity”.⁴²⁰</p>

⁴¹⁹ For a list of national authorities, see http://ec.europa.eu/agriculture/quality/schemes/national-authorities_en.pdf. The Guide for applicants is available here: http://ec.europa.eu/agriculture/quality/schemes/guides/guide-for-applicants_en.pdf

⁴²⁰ Department for Environment, Food & Agriculture, *EU Protected Food Name (PFN) scheme*.

https://whitehall-admin.production.alpha.gov.co.uk/government/uploads/system/uploads/attachment_data/file/218650/faq.pdf

	Inspection bodies may be private companies and therefore levy a charge for inspections.
What mechanisms have been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?	<p>Authorities and/or bodies enforcing compliance with PDO-PGI obligations in respect of product placed on the market (Article 38 of Regulation 1151/2012).⁴²¹</p> <p>Four products have had their PGI or PDO certification cancelled: Newcastle Brown Ale (UK), Höllen Sprudel, Rieser Weizenbeir, Goginger Bier.⁴²² Newcastle Brown Ale's status was cancelled in 2007 when the factory moved away from its Newcastle origin to Tadcaster, Yorkshire. The United Kingdom has to put in an official request to cancel the status.⁴²³ The Höllen Sprudel registration was cancelled due to high inspection costs.⁴²⁴ Ankerbrauerei GmbH & Co. KG requested that 'Rieser Weizenbier' be cancelled as they were no longer interested in protecting the name for marketing reasons (they stated that for the purposes of selling the product locally, the name is not important as the products is already well known).⁴²⁵</p>
Describe the mechanism for receiving and responding to complaints.	<p>An objection to a name proposed for registration can be made:</p> <ul style="list-style-type: none"> • By a private individual or organisation in the EU, to its national authority. • An individual or organisation outside the EU can lodge an objection on-line using DOOR or send it to the Commission, directly or via their national authority.
For how long is the certification valid?	Ongoing, but annual inspections are carried out on the protected products.
In which Member States is the certification scheme valid and supported?	Regulation - therefore valid in all Member States.
If applicable, how frequently have updates been made to the certification scheme?	<p>Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.</p> <p>Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.</p> <p>Regulation 1151/2012/EU of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs</p>
What are the scheme's key	Coverage. The scheme protections apply across the EU and through

⁴²¹ European Commission, Authorities and/or bodies enforcing compliance with PDO-PGI obligations in respect of product placed on the market (Art. 38 of Reg. 1151/2012), July 2013.

http://ec.europa.eu/agriculture/quality/schemes/compliance-authorities_en.pdf

⁴²² For an updated list see: http://ec.europa.eu/agriculture/quality/schemes/cancellations_en.pdf

⁴²³ European Commission, Regulation 952/2007/EC of 9 August 2007 cancelling a registration of a name in the Register of protected designations of origin and protected geographical indications (Newcastle Brown Ale (PGI), OJ L 210, 10.08.2007, pp. 0026-0027.

⁴²⁴ European Commission, Regulation 194/2011/EU of 28 February 2011 cancelling the registration of a name in the Register of protected designations of origin and protected geographical indications (Höllen Sprudel (PDO), OJ L 56, 1 March 2011, pp. 3-4.

⁴²⁵ European Commission, Publication, pursuant to Article 12(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, concerning a cancellation application (2009/C 300/08) OJ C 300/22, 10 Dec 2009.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:300:0022:0023:EN:PDF>

success factors?	<p>some bilateral trade agreements with other countries.</p> <p>Certifications are not exclusive to the applicant, but can also be used by producers of the same product in the same area (some free-riding, but also some diffuse benefits and network effects from collective application procedure).</p> <p>Proxy seal of quality.</p> <p>Incorporation of existing geographical origin protection into the main scheme – it operates alongside existing schemes. The scheme delegates much of the national part of the application process to the national level and then conducts the European part at the European level.</p>
Identify the criticisms, failures, concerns and challenges to the scheme.	<p>Criticised as protectionist, producing barriers to entry to certain markets, narrowing competition in existing markets, primarily benefitting those with land property rights to areas (PDO and PGI are applied to geographical areas).⁴²⁶</p> <p>Criticisms also exist in relation to: how acceptability and formulation of applications varies by country and product, non-uniformity of applicant groups, no complete guide to appointment of inspectors, variable quality of inspections and the highly variable (and unpredictable benefits to different types of products).⁴²⁷</p>
Other relevant issues	-
Evaluation of overall impact	The two schemes have a relatively significant number of members (given the way they certify types of products rather than individual products), seem well known, and appear to be desirable certifications for particular types of food producers to possess. Their impact outside this area of specialty, heritage or traditional food types is limited.
Website	http://ec.europa.eu/agriculture/quality/schemes/index_en.htm

⁴²⁶ Goodman, M.K., Damian Maye, and Lewis Holloway. "Ethical foodscapes? Premises, promises, and possibilities", *Environment and Planning A*, Vol. 42, 2010, pp. 1782-1796. <http://www.envplan.com/epa/editorials/a43290.pdf>

⁴²⁷ Barjolle, Dominique and Bertil Sylvander, "Some factors of success for origin labelled products in agri-food supply chains in Europe: market, internal resources and institutions". *ISMEA*, Le Mans, 19 Feb 2002. <http://www.origin-food.org/pdf/partners/bs19%20fev02.pdf>

10.9 RADIO AND TELECOMMUNICATIONS TERMINAL EQUIPMENT DIRECTIVE

Name of the scheme	Radio and Telecommunications Terminal Equipment Directive
Nature and type of scheme	Cross-sectoral scheme (R&TTE equipment). Voluntary scheme - obligatory compliance to requirements but not certification.
Country	EU
Inception (date/year)	7 April 1999
Issuing organisation and type	European Commission with the European Telecommunications Standards Institute (ETSI) (independent non-profit standardisation organisation) and the European Committee for Electrotechnical Standardisation (CENELEC) (a non-profit technical organisation set up under Belgian law).
Objective of the scheme	The main objective of the R&TTE Directive is to establish a regulatory framework for the placing on the market, free movement and putting into service of radio equipment and telecommunications terminal equipment in the European Union.
Brief description of the scheme	<p>The R&TTE Directive is a 'New Approach' Directive. The 'New Approach' was introduced in the mid-1980s but continues to be a key policy for European regulation. It establishes a regulatory framework for placing goods and services on the European market, free movement of those goods and services, and their putting into service. It focuses heavily on standardisation. The principles of the New Approach are:</p> <ul style="list-style-type: none"> • Legislative harmonisation is limited to essential requirements that products placed on the Community market must meet in order to benefit from free movement within the Community; • The technical specifications of products meeting the essential requirements set out in the directives are laid down in Harmonised Standards; • Application of harmonised or other standards remains voluntary, and the manufacturer may always apply other technical specifications to meet the requirements; • Products manufactured in compliance with Harmonised Standards benefit from a presumption of conformity with the corresponding essential requirements. <p>Harmonised Standards (HS) are a particular form of European Standards (EN) and can only be produced by the three recognized European Standards organisations (CEN, CENELEC and ETSI). The work is consensus based and the Harmonised Standards are adopted through a public approval process. Their application is voluntary. Harmonised Standards are distinct from other ENs in that:</p> <ul style="list-style-type: none"> • They are produced under a formally issued standardization mandate through the European Commission's "98/34/EC procedure"; • The standards take due account of the essential requirements stated in the relevant Directive; • When the standard has been adopted, a reference to it is placed in the Official Journal of the European Communities with an indication of the Directive for which the presumption of conformity should apply.
Target of scheme	The Directive is targeted at manufacturers and importers of R&TTE equipment.
Beneficiaries of the scheme	<p>The beneficiaries of the Directive are:</p> <ul style="list-style-type: none"> • Users of R&TTE equipment,

	<ul style="list-style-type: none"> • Market Surveillance Authorities (MSAs), • Public services, and • Citizens in general.
Regulatory framework underlying the scheme	<p>European Parliament and the Council, Directive 1999/5/EC of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, OJ L 91, 7.4.1999, p. 10–28.</p> <p>The R&TTE Directive establishes the regulatory framework for the placing on the market, free movement and putting into service in the European Union (EU) of radio equipment and telecommunications terminal equipment. The aim of this Directive is to create an open and competitive single market. It also aims to ensure a high level of health and safety protection, and to avoid harmful interference. This Directive is intended to encourage rapid dissemination of innovative technology and promote competition in the internal market for telecommunications.</p>
Was a single regulation (act) sufficient or is there a requirement for the introduction of additional administrative measures?	The Directive itself sets out the regulatory framework. As mentioned previously, there are harmonised standards to facilitate compliance to specific requirements set out by the Directive. It is the obligation of each Member State to ensure that RTTE equipment complies with the essential requirements of the Directive where it is properly installed, maintained and used, which is a condition for its being placed on the market.
Is there a requirement for establishment of a new dedicated authority? What is its legal status?	No.
What mechanism or entity controls the scheme at EU level?	<p>The EC harmonises the essential requirements for radio equipment so as to avoid harmful interference, via the New Approach R&TTE Directive. The New Approach R&TTE Directive regulates the requirements that products must meet in order to be placed on the market and put into service (without prejudice to conditions attached to authorisations). The usual way for manufacturers to comply with these requirements is to apply Harmonised Standards developed by ETSI and CENELEC (where harmonised standards are not applied, a Notified Body has to be consulted. R&TTE has specific responsibilities in respect of Notified Bodies appointed under EU R&TTE Directive). The Directive is implemented at national level by Member States, in particular by Market Surveillance Authorities.</p> <p>At the EU level, DG Enterprise and notified bodies designated by the competent authorities of the Member States to perform the conformity assessment tasks described in the Directive respectively. Notified bodies designated by the Member States should meet specific criteria (prescribed in Annex VI of the Directive), i.e., demonstrate the required level of resources, competence, independence, impartiality and integrity. This is subject to surveillance at regular intervals.</p>
What is the level of integration among Member States achieved in the field?	The Directive applies throughout the European Union, meaning all Member States of the European Union. It is also applied in non-member countries if there is a relevant agreement.
What are the requirements of implementation at Member State level?	Member States need to ensure that equipment complies with the essential requirements of the Directive where it is properly installed, maintained and used, which is a condition for its being placed on the

	market.
Are there any noted disputes or challenges to the regulatory framework? Is there any important EU-level case law that substantially affects the implementation of the framework?	The Directive is subject to revision but this is not to address disputes rather to deal with challenges that need to be addressed according to the various open consultations and impact assessment exercises that have taken place.
How many entities were certified in 2012? How many have been certified so far in 2013?	N/A.
What are the conditions for award of certification?	To demonstrate compliance of equipment with the Directive, the interested manufacturers should have the equipment comply with the related Harmonised Standard.
What is the certification process?	<ul style="list-style-type: none"> • Conformity with the essential requirements (through a conformity assessment, and having consulted the technical documentation). • Identification (i.e., model, manufacturer, serial or batch number): <ul style="list-style-type: none"> ○ CE marking. ○ Notified Body identification number if involved in the conformity assessment procedure. ○ Alert sign (for class 2 equipment only⁴²⁸): The alert sign must be indicated as soon as a restriction on use applies to the equipment and must follow the CE marking. ○ Notification (for class 2 equipment only): The responsible person for placing the equipment on the market must notify its intention at least 4 weeks before the equipment is first placed on the national market. The form has to be sent to the responsible national authority. • Indication of the intended use of the equipment (written description or in visual form by the use of the terms known to the public). • Indication of the countries where the equipment is intended to be used (for class 2 equipment only): written description, abbreviation of country code, pictogram. • Indication of any restrictions of use (for class 2 equipment only): written description. • Indication of the interfaces of the networks to which the equipment is intended to be connected (TTE only): written description or by terms known to the public • Declaration of conformity
What are the costs related to the scheme?	N/A
What mechanisms have	According to the R&TTE Guidance: The Directive does not contain

⁴²⁸ Class 1 radio equipment is radio equipment which can be placed on the market and be put into service without restrictions. Class 2 radio equipment refers to all radio equipment not falling into the definition of Class 1.

<p>been put in place to enforce the terms of the scheme? On what grounds could awarded certification be terminated and/or revoked?</p>	<p>provisions on how surveillance should be organised and carried out in the Member States but details are given in the Blue Guide.⁴²⁹ The legal and administrative surveillance infrastructures are therefore different from one Member State to another. A list of the Member State surveillance authorities can be found at: http://ec.europa.eu/enterprise/R&TTE/marksur.htm.</p> <p>The Directive enables the surveillance authorities to gain access to information on equipment. In particular, it requires the declaration of conformity and technical documentation to be retained for inspection by them. This information must be made available by the manufacturer, by his authorised representative established within the European Union, or where neither is in the European Union, by the importer or person responsible for placing the apparatus on the market. The information cannot be withheld on the ground that it contains confidential information (i.e., commercial confidentiality). The surveillance authorities themselves have a duty to respect confidentiality. Surveillance authorities may also, in accordance with their national laws, check and test products sampled in the market or distribution chain under their jurisdiction in accordance with national laws. Surveillance activities may arise as a result of a complaint or random check or as part of a systematic programme. Where problems are found, the follow-up will depend on the seriousness of any non-compliance but there should first be an attempt to resolve matters nationally through direct dialogue with the manufacturer or his authorised representative. In serious cases or where there is a failure to implement adequate remedial measures in a timely manner, withdrawal from the market may be imposed and the surveillance authority concerned will trigger the formal ‘safeguard’ procedure under Article 9 of the Directive. Under this procedure, formal notification of the action taken and the reasons for it is made to the Commission. The Commission will then inform the other Member States, consult with the TCAM and, in due course, give an opinion on the action taken. The surveillance authorities collaborate in the R&TTE ADCO (Group on Administrative Cooperation).⁴³⁰</p>
<p>Describe the mechanism for receiving and responding to complaints.</p>	<p>Notified bodies are required to have a policy and procedure for the resolution of complaints received from clients or other parties. Where a manufacturer is dissatisfied with the service performed, he should file a complaint with the notified body in question. A complaint can also be filed by the manufacturer with the national designating authority. Where non-compliant apparatus has been subject to the conformity assessment procedure involving the service provided by a notified body, the Member State supervising the notified body will need to take appropriate action and inform the Commission and the other Member States accordingly.⁴³¹</p>
<p>For how long is the certification valid?</p>	<p>N/A.</p>
<p>In which Member States is</p>	<p>The Directive is valid across all EU Member States since 7 April 2000.</p>

⁴²⁹ European Commission, Guide to the implementation of directives based upon the New Approach and the Global Approach, Luxembourg, 2000. http://ec.europa.eu/enterprise/policies/single-market-goods/files/blue-guide/guidepublic_en.pdf

⁴³⁰ European Commission, R&TTE Guide - Version of 20 April 2009, http://ec.europa.eu/enterprise/sectors/rtte/files/guide2009-04-20_en.pdf

⁴³¹ Ibid.

the certification scheme valid and supported?	
If applicable, how frequently have updates been made to the certification scheme?	Non-specified frequency. Two review reports have been published (see below). On 17 October 2012, the Commission adopted a proposal for the revision of the R&TTE Directive. ⁴³²
What are the scheme's key success factors?	The most important success factors of the RTTE Directive are: <ul style="list-style-type: none"> • It is applicable across the EU Member States so manufacturers and retailers of equipment don't have to comply with any national specific regulations; • The scheme is voluntary and self-certified and not obligatory; • Compliance to regulations (by a declaration of conformity) is accepted/no need to become officially certified.
Identify the criticisms, failures, concerns and challenges to the scheme.	There have been two impact assessment exercises concerning the Directive 1999/5/EC. The first one was performed by Technopolis in 2009 ⁴³³ , and the second internally by the Commission in 2012 (concerning a potential revision of the Directive). ⁴³⁴ The two exercises show a low level of compliance with the requirements from EU Market Surveillance Authorities (MSAs), ranging between 29 per cent and 56 per cent. That is even lower for issues concerning administrative compliance. This could be due to the lack of sanctions. Thus, a number of issues need to be addressed.
Evaluation of overall impact	The R&TTE Directive succeeded in creating an open and competitive market for the free movement and putting into service in the European Union (EU) of radio equipment and telecommunications terminal equipment. All Member States have transposed the Directive.
Website	http://ec.europa.eu/enterprise/sectors/rtte/index_en.htm

⁴³² European Commission, Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment, COM(2012) 584 final, 2012/0283 (COD), Brussels, 17 Oct 2012.

⁴³³ Radauer, Alfred, Ruta Rannala, Effie Pitsaros, Lorena Rivera-Leon and Rurik Holmberg, *Impact Assessment concerning a proposed mandatory registration system in the scope of Directive 1999/5/EC*, Final Report, Study carried out by the Technopolis Consulting Group for the European Commission, DG Enterprise and Industry, 5 Oct 2009. http://ec.europa.eu/enterprise/sectors/rtte/files/technop-ia-radio-finrep_en.pdf

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Abstract

This report identifies and analyses key EU certification schemes in select sectors such as: network and information security, general product compliance, the environment, financial auditing and accounting, entertainment, the food industry and the telecommunications sectors and analyses them according to a standard set of criteria in relation to their background, development, practical set-up, legislative mandate (e.g., relevant directives, rules, links to legal obligations), main concerns and challenges. This identification and analysis will clarify the key principles on which such EU certification schemes are awarded and operate, and will help us draw lessons for an EU-wide privacy certification scheme.

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